

COUNCIL MEETING

January 21, 2010

The Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, Historic County Building, 4396 Rice Street, Room 201, Lihu'e, Kaua'i, on Thursday, January 21, 2010 at 9:21 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Dickie Chang
Honorable Jay Furfaro
Honorable Daryl W. Kaneshiro
Honorable Lani T. Kawahara
Honorable Derek S.K. Kawakami
Honorable Bill "Kaipo" Asing, Council Chair

APPROVAL OF AGENDA:

Mr. Furfaro moved for approval of the agenda as circulated, seconded by Mr. Chang, and unanimously carried.

MINUTES of the following meeting of the Council:

Public Hearing of December 16, 2009, re: Bill No. 2339

Mr. Kaneshiro moved for approval of the minutes as circulated, seconded by Mr. Furfaro, and unanimously carried.

Chair Asing: Next item please.

PETER A. NAKAMURA, COUNTY CLERK: Next matter is a matter for receipt, communication C 2010-15.

COMMUNICATIONS:

C 2010-15 Communication (01/07/2010) from the Director of Finance, transmitting for Council information Period 5 Financial Reports – Statement of Revenues as of November 30, 2009.

Chair Asing: Can we have a motion to receive?

Mr. Kaneshiro moved to receive C 2010-15 for the record, seconded by Mr. Furfaro.

Chair Asing: Any discussion?

Mr. Furfaro: Yes, Mr. Chair.

Chair Asing: Yes, go ahead.

Mr. Furfaro: May I ask that the Finance Department, as the other fees and incomes come to us from the state, could I make a request that they make certain...we're timely on getting our particular legislative portions that is currently in place from the state. I notice sometimes they lag behind as much as 90 days on the TAT payments.

Chair Asing: Why don't we send a communication to that effect?

Mr. Furfaro: Thank you very much.

Chair Asing: Thank you.

Mr. Furfaro: We want to make sure we get our share before there's any changes.

Chair Asing: With that, any further discussion? If not all those in favor say, aye.

The motion to receive C 2010-15 for the record was then put, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matter is a matter for approval, communication C 2...2010-16.

C 2010-16 Communication (12/23/2009) from the Chief of Wastewater, Department of Public Works, requesting Council approval to replace the influent flow meter at the Līhu'e Wastewater Treatment Plant (WWTP) at a cost of approximately \$25,000.00, provided by funds available in the Wastewater Division Equipment Repair and Maintenance account: Mr. Furfaro moved to approve C 2010-16, seconded by Mr. Chang, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matter is communication C 2010-17 for approval.

C 2010-17 Communication (12/23/2009) from the Chief of Wastewater, Department of Public Works, requesting Council approval to replace the influent flow meter at the 'Ele'ele Wastewater Treatment Plant (WWTP) at a cost of approximately \$6,500.00, provided by funds available in the Wastewater Division Equipment Repair and Maintenance account: Mr. Furfaro moved to approve C 2010-17, seconded by Mr. Kaneshiro, and unanimously approved.

Chair Asing: Next item please.

Mr. Nakamura: Next matter for approval is communication C 2010-18.

C 2010-18 Communication (12/30/2009) from the Director of Housing, requesting Council approval for the Kaua'i County Housing Agency to provide site control of the project site for Pa'anau Village – Phase 2 to the Kaua'i Housing Development Corporation in order to secure financing to develop a 50-unit affordable rental project in Kōloa.

Mr. Furfaro: Move to approve, but I do have some questions for Housing.

Mr. Kaneshiro: I second the motion on that.

Mr. Furfaro moved to approve C 2010-18, seconded by Mr. Kaneshiro.

Chair Asing: Okay, with that, can we have Eugene up, please, or Gary. The rules are suspended.

There being no objection, the rules were suspended.

Chair Asing: Good morning, Gary.

Mr. Furfaro: Good morning, Gary.

Mr. Chang: Hi, Gary.

GARY MACKLER, Housing Development Coordinator: Good morning, councilmembers.

Ms. Kawahara: Hello.

Chair Asing: With that, go ahead...

Mr. Furfaro: Yes.

Chair Asing: ...Councilmember Mr. Furfaro.

Mr. Furfaro: Thank you, thank you, Mr. Chair. Gary, thank you for being here this morning. Just because of the general financial positions across the state right now and we have an excellent track record with the...with the agency that we're talking to in regards to piggybacking on some financial opportunities on this 50-unit project, it seems that they have revenue sources that (inaudible)...help move this project forward. And I've read the material and the amounts identified as well as the type of unit that we're talking about producing here. Can you give us a quick snapshot on the overall financing of this project?

Mr. Mackler: Yes, I'd be happy to do so. The estimated total development for the second phase of Pa'anau Village, which is a 50-unit multi-family affordable rental project, is \$13.7 million. The primary financing for this development is going to come through the Low Income Housing Tax Credit Program. The...that particular program is administered by the State of Hawai'i, the Hawai'i Housing Finance and Development Corporation. Each year they make a competitive application available. It is a statewide competition for developers to seek that financing. It brings in typically about 75% to 80% of a project's equity need to develop. That leaves a gap in the financing, which has to be filled from other funding sources. And for this particular project, the County of Kaua'i has already committed and the council has appropriated \$1.95 million of federal HOME Investment Partnership block grant funds. This is funding that we receive or is made available to us, I should say, each year by the state, by the same organization, to use for rental housing, for sale housing projects. We have been using this grant since 1992. The...and we're looking at a third source of financing, which the developer for this project, I should identify, is Kaua'i Housing Development Corporation will be seeking from the Hawai'i Community Reinvestment

Corporation. They are a...that organization is a community-based, non-profit organization. It's a consortium of eight lenders throughout the state that includes lenders such as First Hawaiian Bank, Bank of Hawai'i, Central Pacific Bank, HomeStreet, among others, and they are going to apply for a private loan to basically fill the remaining gap of financing that's needed to develop this project.

Mr. Furfaro: What is that gap? Do you know the dollar amount?

Mr. Mackler: Well, we're looking at...we're looking at about...based on their application that they're planning to submit before the end of this month to the state, they're looking at \$10 million approximately of tax credit financing, that's both federal and state tax credit financing. We have, as I mentioned, \$1.95 million of HOME funds committed, but Kaua'i Housing Development Corporation is also seeking the use of our 2010 allocation of HOME funds, which they have applied for, which is \$750,000, so, that...that would be added to the \$1.95 million. And the...the remaining gap, as I mentioned, would be through a loan from Hawai'i Community Reinvestment Corporation. The developer's preference is to borrow as little pos...as possible through that private loan because it...the less debt service you have on the project, the more sustainability long-term you also have for the...for the project's operation. So that's...that's essentially a summary of how they plan to finance. It's really no different than...in fact, Kalepa Village Phase 2 was financed exactly with the same sources that I have described.

Mr. Furfaro: Okay and we do have a...a good track record with them. But Gary, your...your agency is...you're committed to the 2010 seven hundred fifty thousand (\$750,000), how...how do we do that...

Mr. Mackler: Okay.

Mr. Furfaro: ...is my question since the council cannot approve moneys for future projects?

Mr. Mackler: Okay. The way that works is we...in early November we initiated our annual application for our Community Development Block Grant program and our HOME Investment Partnerships program, inviting the public and the organizations that provide services in the community to apply for them...for those funding sources. The deadline was January 8. We are reviewing applications now. We've started that process and in late February we will be forwarding to this council a resolution listing the projects that have been selected by the mayor to request funding appropriation for those projects. We, as part of that, have to go out with a 30-day comment period to receive public comment before we come back to the county council to seek their approval for the appropriation. But the 2010 program year allocation of HOME funds, based on the application that we have received from Kaua'i Housing Development Corporation, in all likelihood will be part of that action plan that we submit by resolution to the council.

Mr. Furfaro: And we'll see that resolution in February?

Mr. Mackler: You should receive it around...right around the end of February.

Mr. Furfaro: Okay, and...and that will...that will satisfy the need for confirmation that 100% of the funding is present. That resolution will...

Mr. Mackler: Yes.

Mr. Furfaro: ...satisfy that. Okay.

Mr. Mackler: Yes.

Mr. Furfaro: And...and that's what will give us the \$13.7?

Mr. Mackler: Yes.

Mr. Furfaro: Okay, I have no further questions.

Chair Asing: Thank you, with that, Councilmember Chang.

Mr. Chang: Thank you, Chair. Good morning, Gary.

Mr. Mackler: Good morning.

Mr. Chang: Sounds like great news, great, great project, great location, the need for additional housing in the south shore area and 15, 20 minutes from Līhu'e. So, if it was a perfect world, we got the funding going, you...do you foresee maybe construction possibly happening end of the year, very soon?

Mr. Mackler: Yes. I think...in a typical year the state makes its award for tax credit financing each year around May/June. If...if Kaua'i Housing Development Corporation's application is approved, they would be able to proceed with their project. They are looking at a schedule that would start site work in November and December of this year. There would be a course...construction that would go throughout the...the fo...the year 2011 for the vertical construction. And they're looking at occupancy in the early part of 2012. And this is a \$10,000 plus construction project. It will have...we...we know some good benefit for the community, especially for those who work in the trades to have work. The land, I also want to point out, is in the process of being subdivided by Kukui'ula Development Corporation. It is a site that's being donated to the county at no cost as part of an ordinance and an affordable housing condition in an ordinance.

So, as I've indicated in the communication that was sent over to you requesting your authorization to give site control to the Kaua'i Housing Development Corporation, this project will be provided to that organization through a long-term ground lease doc...legal document which we will prepare and transmit to the county council at a later date. So, it really is a good project from the standpoint of its economic benefit, from the standpoint that it's a long-term basically permanently affordable housing project that will serve the long-term needs of the community in Kōloa.

Mr. Chang: Thank you.

Chair Asing: Thank you, any other questions, councilmembers?
Yes.

Mr. Kawakami: Yeah, I want to send a question in writing, but if...if you guys are ready to answer, you can answer now...

Mr. Mackler: Okay.

Mr. Kawakami: ...but if not, we can send it over in a communication. But I'm just curious to know how many affordable gap housing units are we striving to attain in our inventory to meet the needs of Kaua'i looking forward? I don't know if we've done forecasts to see how many units would strike that balance in not having too much and...and not having too little. Maybe there is no such thing as having too much, but I'd kind of like to know what the end result is looking like so that we have a target to shoot for if...if that's possible.

Mr. Mackler: Okay, that might be a better...a...a question better sent over in writing. Our last housing policy update was conducted in 2006 and much has changed since then. I can in...inform this council that the housing directors statewide have been talking about going out later this year with another housing policy study update to try to get a better read on where the market is at this particular time. We're trying to time that in light of the new census data that will be taken and available within a year or year-and-a-half from now. So, I can give you some of our...some of the data that we do have from our former study, but I can also tell you that we will be updating that...that information later this year.

Mr. Kawakami: And if the data that's going to come in is more updated, I can wait for it. It's not something that I want tomorrow or next week. I'm just thinking in the future because I know that these affordable housing projects are not going to be coming up like this, I mean I'm assuming, but...so if there's better data to work from, I can wait. It's no problem.

Mr. Mackler: Okay, okay.

Chair Asing: Thank you, any other questions?
Councilmember Bynum.

Mr. Bynum: Yeah, I just wanted to concur with Councilmember Kawakami that he's asking a good and important question given that the economic realities on the ground have changed dramatically since 2006. And I appreciate your answer that you're on it and...and looking for updated data, but I think it'd also be accurate to say that the study in 2006 showed tremendous need at many income levels, primarily at the 100% of median income and below. And that...that may have...that need may have been moderated some by recent economic developments, but I think it's a safe assumption that there still is an unmet inventory need. Would you agree with that?

Mr. Mackler: I would. One thing the studies tell us each time we do that, is the strongest demand is really at the lowest income groups. This particular project Pa'anau Village Phase 2 will be serving an income group that is 60% and below median income. That is a requirement of the Low Income Housing Tax Credit program that all initial occupants must be at or below 60% of median income. To give you an idea of what that means for...for a 4-person family, that would be a maximum income of \$46,000 approximately for that household. And for...for an individual family, it would be \$32,000 approximately. So, it...the one constant we do see from study to study and...and really the strongest demand for...for affordable housing is really at the lowest range of income groups. And...and this project will...will...will target that...that group.

Mr. Bynum: Right and I think that is reflected by the most recent workforce housing project that came online at Waipouli. The available units in that income category were snapped up quickly.

Mr. Mackler: Filling from the bottom up.

Mr. Bynum: Right and so, you know that's...you know, it's clear that there's a need for...in this invent...for inventory in this income range. Okay, thank you.

Chair Asing: Thank you, any other questions?
Councilmember Furfaro.

Mr. Furfaro: Yes. Just as a follow up to Mr. Kawakami's, would you send over copies...there's three or four of us that are familiar with the 2006 housing study, but we do have several new members and...

Mr. Mackler: I'd be happy to, yeah, sure.

Mr. Furfaro: And if you could send a copy to us...

Mr. Mackler: Sure.

Mr. Furfaro: ... for the 2006 study.

Mr. Mackler: Sure.

Mr. Furfaro: So when we get new material that's updated, we can make a comparison as to what were the variables in the two years.

Mr. Mackler: Okay.

Chair Asing: Thank you, any other questions, councilmembers? If not, Gary, I just want to...want to thank you for responding on this project so early, so early meaning that, you know, I can remember the...the first Pa'anau project that we had. We probably had the land available for at least 15 years before we did anything at all. And...and also, you know, some of the comments by some of the councilmembers on where we are, how much are we building, what's the number that we're looking for, for those on the council that may not know and understand the...the housing situation and problems, there was a time when, as an example, when we first did the first Pa'anau project, the first 60 units, the public just went berserk. What are you doing, county? Why are you building these units and interfering with private industry? We have a tough time now trying to fill our units in the private industry and you're building units, what are you doing? So, I...I think, you know, you need to understand there's many, many things to it that needs to be looked at and when we start to compete with the private industry, that also is a problem and we did have, when we started that first project, many, many inquiries and people were very upset on what the county was trying to do. So it's...it's not that easy, it's not that black and white, and the Housing Agency has always tried to stay on the...the right track and provide housing at the right and opportune time. But it's not black and white; it is not simple and easy. So, I...I want to thank you for, you know, all the work that you do in trying to strike a balance between what the agency is doing. For those of you that might not also know and understand, City & County of Honolulu is...is thinking of just getting out of providing units. I mean, that's where they stand. So, it's a...you know, it's a...it's a tough...tough case and it's not easy and simple. So I want to thank you for just trying to stay in there and finding the right balance on when to do a project and how to do it. So, thank you very much.

Mr. Mackler: Thank you, Council Chair.

Chair Asing: Appreciate that.

Mr. Mackler: Thank you, councilmembers.

Chair Asing: Thank you, with that, Glenn?

GLENN MICKENS: Thank you, Kaipo, for the record Glenn Mickens. I just want to compliment Gary and the Housing Agency for their...oh, tremendous efficiency and the way they run these programs. It's really refreshing when these people do their homework, they come up here and they have answers for everything. But I just really want to compliment he (sic) and their people. Thank you, Kaipo.

Chair Asing: Thank you. Is there anyone else? Mr. Taylor.

KEN TAYLOR: Chair and members of the council, first I would ditto Glenn's comments, but I also want to thank the Chair for the tidbit of information of a little history of what's gone on, but the one thing that comes to my mind, anyway, is that if private industry is not providing affordable units, then it is the responsibility of the county to fulfill those needs. And I...I guess I have a little bit of struggle with the problem of private industry versus what the Housing Agency is doing, and it'd be interesting to have some feedback on that at some point in time, but I...I...I do want to let you know that I appreciate the little bit of history. It's always refreshing to know some of the background of what's...what has happened and why certain things were done, and the more all of us know and understand about the whole process, the better it is for everybody. Thank you very much.

Mr. Kawakami: I have a question.

Chair Asing: Thank you. Go ahead.

Mr. Kawakami: If we want to promote this kind of affordable housing, should we be...should we be mandating it or should we be providing incentives for these kinds of projects? You know for a private developer? Like you said, if we're not getting the inventory that we need, should we be mandating or should we be incentivizing these type of behaviors?

Mr. Taylor: Well, in many communities that I'm familiar with, when private industry comes in to build a development, they're required to provide X number of affordable units. They can either put those affordable units within the project itself or they can give money to the county to go into a fund to provide at some other location. I personally think that affordable units should be intermixed within development, not separated because I...I see affordable units for young...younger...primarily younger people coming up that are struggling to...to move and they want to...you want to have them in...in a setting where they have examples of people that have reached a higher level. And by intermixing affordable units in a...in a project like this, you give them that insight to...to strive for something more where if you isolate all affordable units, then they're in it...they're...you...you're sort of treating them like second-class citizens and...anyway, that's just some of my thoughts. Thank you (inaudible).

Chair Asing: Councilmember Bynum.

Mr. Bynum: Thank you for your comments this morning. Without taking too much time on this issue, this council in the previous term worked for over a year, I'm sure, on an affordable housing policy. We do have that policy in place that as, just as you stated, when developers do larger projects, there's the requirement that a certain percentage be built as affordable housing. That's common in many places and our bill has some...several innovative things, including trying to address the mark...the integration of the units by offering incentives to the, you know, using some of the tools that I think Councilmember Kawakami is suggesting that, you know, here's the exemption, if you integrate it, you have incentives to integrate, you have incentives to do green building, you have incentives to do a number of things. So...but I think this discussion is good this morning and I'm sure our housing committee chair will follow up at an appropriate time because it's probably a really good time to revisit those issues and...and have a discussion perhaps when the new statistics come out. Because we have lots of...there's still, even with the downturn in housing values, a big gap between what a working class family can get a mortgage for and what sales levels are. So, a real need for that affordable...and it's, you know, more workforce housing. This is not just for people with low incomes. People with 100% of median income which is in the \$68,000 to \$70,000 range right now have very few, if any, options to purchase homes at a mortgage level that they can receive. So, I just wanted to make those comments and thank you for your testimony and I think in the coming months we'll follow up with more discussion.

Mr. Taylor: Thank you.

Chair Asing: Thank you. Is there anyone else in the public? If not, I call the meeting back to order.

There being no one else wishing to speak, the meeting was called back to order, and proceeded as follows:

Chair Asing: I believe we have a motion on the floor. Is there any further discussion? If not, all those in favor say, aye.

The motion to approve C 2010-18 was then put, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matters are Claims, communication C 2010-19, which is a claim filed against the county by AIG Hawai'i Insurance as subrogee for Marvin Terada, and C 2010-20, which is a claim filed against the county by Michael G. Koerte.

CLAIMS:

C 2010-19 Communication (12/29/2009) from the County Clerk, transmitting a claim filed against the County of Kaua'i by AIG Hawai'i Insurance as subrogee for Marvin Terada for damage to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Furfaro moved to refer C 2010-19 to the County Attorney's Office for disposition and/or refer back to the Council, seconded by Mr. Kaneshiro, and unanimously carried.

C 2010-20 Communication (01/04/2010) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Michael G. Koerte for damage to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i: Mr. Furfaro moved to refer C 2010-20 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Kaneshiro, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matter for approval are Committee Reports. From your Committee on Budget & Finance, committee report CR-B&F 2010-01.

COMMITTEE REPORTS:

BUDGET & FINANCE COMMITTEE:

A report (No. CR-B&F 2010-01) submitted by the Budget & Finance Committee, recommending that the following be received for the record:

"C 2009-394 Statement of Condition of the County Treasury as of September 10, 2009,"

Mr. Kaneshiro moved for approval of the report, seconded by Mr. Furfaro, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: From your Committee on Planning, committee reports CR...CR-PL 2010-01, 2010-02, 2010-03, and on page 3, 2010-04.

PLANNING COMMITTEE:

A report (No. CR-PL 2010-01) submitted by the Planning Committee, recommending that the following be received for the record:

"Bill No. 2317, Draft 3 – A BILL FOR AN ORDINANCE TO ESTABLISH A NEW ARTICLE 28, CHAPTER 8, KAUAI COUNTY CODE 1987, RELATING TO SMALL WIND ENERGY CONVERSION SYSTEMS,"

Mr. Kaneshiro moved for approval of the report, seconded by Mr. Furfaro, and unanimously carried. *(See later for Bill No. 2317, Draft 3)*

A report (No. CR-PL 2010-02) submitted by the Planning Committee, recommending that the following be approved as amended on second and final reading:

"Bill No. 2329 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. PM-228-91, RELATING TO GENERAL PLAN DESIGNATION IN KILAUEA, KAUAI (County of Kaua'i, Applicant),"

Mr. Kaneshiro moved for approval of the report, seconded by Mr. Furfaro, and unanimously carried. *(See later for Bill No. 2329, Draft 1)*

A report (No. CR-PL 2010-03) submitted by the Planning Committee, recommending that the following be approved on second and final reading:

“Bill No. 2340 – A BILL FOR AN ORDINANCE RELATING TO ZONING DESIGNATIONS IN ORDINANCE NO. PM-229-91; KĪLAUEA, KAUAʻI (County of Kauaʻi, Applicant),”

Mr. Kaneshiro moved for approval of the report, seconded by Mr. Furfaro, and unanimously carried. (*See later for Bill No. 2340*)

A report (No. CR-PL 2010-04) submitted by the Planning Committee, recommending that the following be approved on second and final reading:

“Bill No. 2328 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. PM-227-91, RELATING TO STATE LAND USE DISTRICT BOUNDARY IN KĪLAUEA, KAUAʻI (County of Kauaʻi, Applicant),”

Mr. Kaneshiro moved for approval of the report, seconded by Mr. Furfaro, and unanimously carried. (*See later for Bill No. 2328*)

Chair Asing: Next item please.

Mr. Nakamura: From your Committee on Public Works/Elderly Affairs, committee report CR-PWE 2010-01.

PUBLIC WORKS/ELDERLY AFFAIRS COMMITTEE:

A report (No. CR-PWE 2010-01) submitted by the Public Works/Elderly Affairs Committee, recommending that the following be approved as amended on second and final reading:

“Bill No. 2332 A BILL FOR AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 6, KAUAʻI COUNTY CODE 1987 RELATING TO THE ENERGY CODE,”

Mr. Kaneshiro moved for approval of the report, seconded by Mr. Chang.

Chair Asing: Any discussion? All those in favor say, aye.

Mr. Furfaro: Excuse me.

Chair Asing: Yes.

Mr. Furfaro: I did not realize that is the bill that I, you know, recused from. So, please reflect it as this is the energy (inaudible)...

Chair Asing: Yeah.

Mr. Furfaro: So reflected, only as 6 votes.

Mr. Nakamura: So we have a...a motion and I think Vice Chair...

Mr. Furfaro: Dickie.

Mr. Nakamura: Oh, okay, we have a motion and a second.

Chair Asing: Yeah, there's a motion and a second...

Mr. Nakamura: Yes.

Chair Asing: ...already. Okay, with...with that, you...you're not going to be voting?

Mr. Furfaro: I'm not going to be voting, right.

Chair Asing: Yeah, okay, with that councilmember...

Mr. Bynum: This is to receive the committee report, correct?

Mr. Kaneshiro: That's correct.

Chair Asing: Yes.

Mr. Bynum: Okay.

Mr. Furfaro: I'm recused from (inaudible).

Mr. Bynum: I just want to make sure I'm...

Chair Asing: Yes.

Mr. Nakamura: This is to approve the committee report, correct.

Mr. Bynum: Okay.

Chair Asing: Okay. All those in favor say, aye.

The motion for approval of the report was then put, and unanimously carried (Mr. Furfaro recused). *(See later for Bill No. 2332, Draft 1)*

Chair Asing: Next item please.

Mr. Nakamura: From your Committee on Public Safety/Energy/Intergovernmental Relations, committee report CR-SEI 2010-01.

PUBLIC SAFETY/ENERGY/INTERGOVERNMENTAL RELATIONS COMMITTEE:

A report (No. CR-SEI 2010-01) submitted by the Public Safety/Energy/Intergovernmental Relations Committee, recommending that the following be approved as amended on second and final reading:

“Bill No. 2336, Draft 1 A BILL FOR AN ORDINANCE TO AMEND CHAPTER 16, ARTICLE 20, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE TRAFFIC CODE,”

Mr. Kawakami moved for approval of the report, seconded by Mr. Kaneshiro, and unanimously carried. *(See later for Bill No. 2336, Draft 2)*

Mr. Nakamura: Next matter for approval are Resolutions. Resolution No. 2010-09, which is a resolution confirming mayoral appointment to the Building Board of Appeals, Dennis P. Aquino, first term, fire.

RESOLUTIONS:

Resolution No. 2010-09, RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE BUILDING BOARD OF APPEALS (Dennis P. Aquino, First Term, Fire): Mr. Furfaro moved for adoption of Resolution 2010-09, seconded by Mr. Kaneshiro.

Chair Asing: I'd like to suspend the rules. We have someone from the public who wants to speak on this item.

There being no objection, the rules were suspended.

ROB ABREW: Mahalo, county council (inaudible). My name's Rob Abrew for the record. I have some copies I'd like to pass out, here. In a democracy the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government process to public scrutiny and participation is the only viable and reasonable method to protecting the public's interest. Therefore, the legislature declares that is the policy of this State of Hawai'i that the formation and conduct of public policy, discussions, deliberation, decisions, and actions of government agencies shall be conducted as openly as possible.

On five...on 1/5/10 and 1/6/10 I presented detailed information about the mayor's selectal...selected applicant for board and commission. I referenced laws of the State of Hawai'i and items in the County of Kaua'i Charter and numerous OIP decisions and a letter sent to the county clerk in this office. All the information I presented was factual. I asked this body to defer the resolutions to appoint these applicants until the public has had a chance to research substance in resolutions so the public could participate and bring testimony on the issue before the county voted.

On 1/7/10 I contacted OIP to look into the issue of ap...the applications not being made public and OIP responded on Friday, 1/8/10, with some guidance. I have included this response in the request to the county clerk on Monday, the 11th.

The letter I received from OIP is addressed Mr. Rob Abrew, Re: Successful Applicants' Applications for Boards and Committees. Dear Mr. Abrew, we have received your email dated January 7, 2010 asking that the Office of Information Practices review whether or not the County of Kaua'i Council must disclose the application of a successful applicant for a county board or commission prior to their action on that applicant, i.e., where the Mayor has appointed the individual and that individual's appointment is now before the council for confirmation. You stated that you orally asked the county council...the county clerk's office for copies of the applications and you were orally denied access to them.

OIP does not generally issue opinions based on informal request (i.e., oral requests) made to agencies for records under the UIPA Act, Chapter 92F. Therefore, we will not be opening a case file for your request. However...

Mr. Nakamura: Three minutes, Mr. Chair.

Chair Asing: Yes, go ahead, finish up.

Mr. Abrew: However, we note that you are correct that OIP has previously opined the council confirmation of boards and commission appointees must be done in an open meeting and that the successful nomi...nominee applications are generally public with respect to information such as names, employment history, current occupation and education. See OIP letter 05-04 addressed to Councilmember JoAnn Yukimur...Yukimura and also to this county clerk and to the chair of the council in OIP letter 91-8.

It is our understanding that at the meeting at which the mayor's nominees were confirmed has passed. Given this fact, we presume that you are no longer interested in getting the actual applications but are instead seeking to get clarification for future confirmation. Given these facts, we suggest that you seek clarification in writing from the county clerk's office or the county attorney's office as to whether and to what extent applications of successful mayoral nominees for boards and commissions will be made available. You may provide them with a copy of this letter, and they may consult with OIP if desired. If you receive a response that is inconsistent with the above-referenced OIP opinions, you may request an opinion at that time, enclosing a copy of your request and any written agency response.

My request to the county council was on 1/11 and basically it asked for conf...written confirmation of...the mayor's successful applicants will be made to the public. I would ask the county clerk to respond to this request for clarification as soon as possible due to a letter I received from the State of Hawai'i Office of Information Practice. I also ask before any additional action is taken by the clerk's office and by the county council on any appointment not already approved by the clerk respond to this request. I've also included in this request for clarification the testimony I presented to the county council on 1/5/10. This testimony described in detail my concerns with information not available to the public as required by law for the county council to review and act on the mayor's selected appointments to various county boards and commissions. As this morning I have not received that letter, so I have not received any clarification on how these rested...resolutions have the information given to the public that can be voted on today because there is none of that information on the application here for the public to testify on this resolution. So I ask that these two be deferred until that letter is answered and written and answered so the public understands when and how they can get...

Chair Asing: Thank you.

Ms. Kawahara: Thank you.

Chair Asing: Is there anyone else who wants to speak on this item? If not, I'm going to call the meeting back to order.

There being no one else wishing to speak on this matter, the meeting was called back to order, and proceeded as follows:

Ms. Kawahara: (Inaudible.)

Chair Asing: Do we have a motion on the floor? Go ahead...

Ms. Kawahara: Can we have this...

Chair Asing: Go ahead.

Ms. Kawahara: ...discussion?

Chair Asing: Go ahead.

Ms. Kawahara: Okay, thank you. I've been following this issue since it came up in our previous interviews and I would like to request some forbearance from my fellow councilmembers because I do believe that there is an issue here with people being able to get the public information at the same time that we post our agenda. We...we were able to do our interview with the applicants, which is good. We do have two more applicants coming up and I know that we've addressed it...the department of boards and commissions has worked with our office to do future...in the future they will be handling it. For these last four, I was wondering if we could do them together and also provide in the next...whenever they do come up in front of us give that 7-day lead period. So if we could...my question is for these councilmembers if we could defer the...these two resolutions and go at the same time when we do the other two resolutions and at that time they would be able to be provided all the information that would be public so they can comment at the same time that we receive the information.

Chair Asing: Thank...thank you. Any further discussion? I'm...I'm not going to be entertaining that. It is my opinion from the county attorney's office, I believe we had the discussion this morning on the floor during the interview process and there is a process that is going to be followed and we will follow that process. I believe it was in answer to your inquiry from the boards & commissions, so we have a process and I believe we should just follow that process. So...

Ms. Kawahara: I guess...

Chair Asing: I just want to say that I will be asking for a motion to approve and move forward with these two as we did the other two and then we'll take care of the problem. With that, any further discussion? Go ahead.

Mr. Bynum: Um...I just...is it possible to have the county attorney on record let us know that we're...we're legally secure in moving forward with approval today?

Chair Asing: I...I don't believe that's...that's a problem. County Attorney, please.

There being no objections, the rules were suspended.

ALFRED B. CASTILLO, JR., County Attorney: Good morning, Al Castillo, County Attorney.

Chair Asing: Good morning. Al, are you...do you see any problems...or...

Mr. Castillo: You know...in terms of me seeing any problems regarding what the process is right now, this council is, and in addition to what was said earlier this morning, is following the proper procedure. Now, what I have observed here is if there is any problem regarding the process, if there's anyone out there that sees a problem, then the correct method in correcting the problem, or if

there's a perceived violation, is to send that to the proper authority to say, this is what occurred, this is my objection, and we will look at the objection. Now, the balance here is we have fine people that have volunteered to help and to assist in our boards and commissions. The applications or the volunteers have gone through the process with boards and commissions and those names have been forwarded to you. Now if there is anything that has been presented to you that suggests that the...that they shouldn't be appointed, then that's for consideration. And if there are any objections, then let the objection be in writing and...and if there's any question for OIP, I would...I would prefer that the question to OIP be made in writing so that we can look at exactly what question was posed because it makes a very big difference as to what question was posed and what question was answered and in what manner it was answered because we are in communications with OIP constantly and we have all of their decisions, we review their decisions and we review whether or not we...well, we do make the legal analysis of the decision making by OIP also. And it's correct, they're not necessarily correct all the time as we have won in the Supreme Court.

Chair Asing: Okay, go ahead, Councilmember Bynum.

Mr. Bynum: So in terms of voting for approval today, you don't see any legal encumbrance to doing that?

Mr. Castillo: There has been nothing presented to this board that would give me cause to believe that anything that's been...that is going to happen here today or what is being done is...is improper.

Mr. Bynum: Thank you.

Mr. Castillo: You're welcome.

Chair Asing: Councilmember Kawahara.

Ms. Kawahara: I appreciate having this discussion. It does seem...I know that all the people that are coming in front of us are fine people. I don't think that's the contention. Some...my question is, so you can help me clarify, do you believe that we've done our due diligence in providing the pub...the information that's supposed to be pub...made public in...within a reasonable amount of time to do these appointments so the public can comment after receiving the information. Because in general, yeah, we post our agendas at seven days before we talk...

Mr. Castillo: There has nothing been...

Ms. Kawahara: (Inaudible) we have it.

Mr. Castillo: Yeah, there's nothing been presented...like I said, again, there has nothing that has been presented here today that would give me cause to believe that any violation has occurred, okay. And if there is a complaint, that complaint should go to the proper authority that handles that specific complaint.

Ms. Kawahara: So...

Mr. Castillo: So, right now, my advice to this council is vote on what has been pre...vote on these matters and decide on these matters with the facts that have been presented to you.

Ms. Kawahara: Okay.

Mr. Castillo: Like I said...and if, you know, when you talk about the Sunshine Law process and procedure, we can go all day, but before you today is whether or not these fine people that have volunteered to the board and commissions, is there anything there that should prevent you from voting yea or nay? And the question to that is there has been nothing presented to you that could give cause for you to question the process.

Ms. Kawahara: Okay, okay. Again, again, I have no...if we're gonna...I am approving all these fine people because they are coming forward to do the volunteer work and stepping up for the community. It's...it's the deeper concept of...you were saying that we're voting on the people here and just going on the facts and I have totally...not even considering Mr. Abrew's issue, but just going on the facts I know that we...we receive these applications for these people as a body and they were confidential. And I understand that anything that's on our agenda and in our packet needs to be available to the public. So when these aren't made available to the public because of confidentiality, that's the fact that I'm...I'm wondering about and in addition too, I understand that we're voting on the people here in front of us today based on their interview and we're supposed to determine on our own is there anything that would...would help us vote yea or nay. And part of that would be the public process, which I don't, just by the facts that we have here, and we weren't able to get public information at the same time we posted the agenda...

Mr. Castillo: Well, well, I...

Ms. Kawahara: ...is my question.

Mr. Castillo: And this is where I think that you're going. It is a real fine line that you walk as a legislator who has an agenda item before you and as someone who is questioning the process on behalf of your constituents.

Ms. Kawahara: And myself.

Mr. Castillo: If you...if...if you as a legislator have a problem with the process, if there has been...if there is something there that you think was not done correctly or if you have a question, I do suggest that you do the same. Inquire into whether or not the process was handled correctly in this situation and you have every right to do so. But, however, your task today, I believe, is to consider the...these people before you with these...with...actually it's going to be two agenda items, yeah?

Ms. Kawahara: Yes...

Mr. Castillo: One with Dennis and one with...so, you know, and I think it...your...it seems to me that you're...there's two separate subjects that you are talking about. And if you want to go into the area regarding process, then I suggest you do the same, make the proper inquiry.

Ms. Kawahara: Okay.

Chair Asing: Thank you, with that, Councilmember Kawakami.

Mr. Kawakami: I know in the private sector there are certain questions we cannot ask in the interview process: how old you are, if you have any physical disabilities, so on and so forth. The confidential information that are enclosed in our packets, basically the applications, are we not allowed to ask the applicant those questions? And...and if so, I mean, I could see the applicant waiving their right to answer or not answer those questions. Say for example, are you a member of a political party, what's your previous work experience. Those questions we're allowed to ask them. Is that right?

Mr. Castillo: I...I...I don't want to...

Mr. Kawakami: Okay.

Mr. Castillo: ...go off the handle and answer. I know what the requirements of...what the charter said...says regarding that particular requirement and say...and whether or not you can answer that question...you can ask that question in public, I'm not sure. And I don't want to go...I don't want to guess.

Mr. Kawakami: Okay, yeah, no...no problem.

Chair Asing: Okay, thank you. Is there any other questions? If not, thank you Al.

Mr. Castillo: You're welcome.

Mr. Kaneshiro: I have a discussion.

Chair Asing: Yes, go ahead. We're back...back into session now.

There being no further questions, the meeting was called back to order, and proceeded as follows:

Mr. Kaneshiro: I have a question for you.

Chair Asing: Al, thank you.

Mr. Kaneshiro: Al, thank you.

Mr. Bynum: Thank you, Al.

Ms. Kawahara: Thank you, Al.

Chair Asing: The meeting is now called back to order.

Mr. Kaneshiro: We're back in discussion mode, aren't we...

Chair Asing: Yes.

Mr. Kaneshiro: ...Mr. Chair?

Chair Asing: Yes.

Mr. Kaneshiro: Thank you. I just want to go back and reference this letter that...because I know it's on the record that Mr. Abrew put forth. If you read the letter correctly, what OIP has stated is that appointees must be done in an open meeting, which we do, and that successful nominee applications are generally public with respect to information as names, employment history, current occupation, and education. And to me, until we vote, you don't have a successful application or candidate until we make the vote, then you call it a success. What if three of us say...or four of us say, no, they don't have, you know, the vote. Is that a successful application that went through the process? You know, so there's some issues here, but as I'm just giving my own opinion, I think we should move on, I would have the chair call for the vote so we can vote and if anybody else has some challenges on this, go back and get, you know, the opinion for OIP and so forth. But the way I read it, it says, and that successful nominee application, so, you know.

Ms. Kawahara: I...can I just clarify the successful nominee application?

Chair Asing: Go ahead. Look...

Ms. Kawahara: Successful nominee application...

Chair Asing: Hang on, hang on. Here's what we're going to do.

Ms. Kawahara: Thank you.

Chair Asing: Listen to me, okay.

Ms. Kawahara: Yes.

Chair Asing: I'm going to give you one more opportunity to speak. I'm also going to give Councilmember Bynum one more opportunity to speak and then we will call for the question. Fair?

Ms. Kawahara: Yes.

Chair Asing: Thank you, with that go ahead.

Ms. Kawahara: Very fair, thank you, Chair. Just in response, I believe...I have been looking into this and the...a successful applicant is the applicant that comes forward and is submitted from the mayor, that is a successful applicant, not whether they get affirmed or confirmed here.

Chair Asing: Okay, thank you, with that...

Ms. Kawahara: And then what I want to say...

Chair Asing: Okay.

Ms. Kawahara: ...is it looks like we're not going to be able to do this with the...

Chair Asing: Okay, thank, thank you.

Ms. Kawahara: I still have the floor, I thought?

Chair Asing: Go ahead.

Ms. Kawahara: Okay, thank you. It looks like we are going to go on and do this, but I do have...I just want it for the record to show that I don't...I don't have any confidence that the public was able to get information as they would have needed to make comment on these...on these nominees. I have no problem with the nominees and I also know that I have already worked with the offices involved that this procedure is going to be much, much cleaner and very clarified in the...in the future. It's just...we have these last four people that are coming through and I was requesting that we would just honor what will be happening in the future because that is...that is what is help...with...it's the give and take between the public and how we make our decisions, not in a vacuum without a public. Thank you very much, Chair, for that.

Chair Asing: Thank you, with that, Councilmember Bynum.

Mr. Bynum: Thank you, Mr. Chair. What's before us today are these nominees, but in the process, you know, I really value the community's input on these issues and questioning us about process and I want to thank Mr. Abrew for posing those questions and I want to thank Councilmember Kawahara for following up with those questions by engaging, you know, in writing with a dialogue with the board and commission and I have every confidence in Mr. Isobe, who has already responded, you know. So it was a good question, how does this process go because when applicants come, they're volunteers, we're happy that they're involved in the community, but under the law apparently some elements of what they provide are public record and some are, by law, confidential. And I think it was a good question to raise and I appreciate our councilmember following up. And I think a resolution and clarification for future is...is invol...is in the works and I have every expectation that it'll be resolved, you know, in due course within a couple of weeks or so. You know, that...what was important to me was to get the county attorney's read on are we okay to move on these nominees today. I heard that answer, so I'm prepared to vote. But I...but I think there will be appropriate follow-up and going forward in the future, we'll have a clarified process about these applications and releasing what information is available under the law to the public. So I think it's all good.

Chair Asing: Thank you, with that...Peter.

Mr. Nakamura: We have a motion and a second.

Chair Asing: Yes, I'm calling for the vote now. So, roll call please.

The motion for adoption of Resolution No. 2010-09 was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Asing: Thank you, next item please.

Mr. Nakamura: Next resolution for approval is Resolution No. 2010-13.

Resolution No. 2010-13, RESOLUTION AMENDING RESOLUTION NO. 2009-08 TO REPLACE AND CONFIRM THE APPOINTMENT OF A MAYORAL APPOINTEE TO THE COST CONTROL COMMISSION (Linda Fayé Collins, replacing Lorna A. Nishimitsu)

Chair Asing: Can I have a mo...

Mr. Nakamura: Oh, I'm sorry.

Chair Asing: I'm sorry...

Mr. Furfaro moved for adoption of Resolution No. 2010-13, seconded by Mr. Bynum.

Chair Asing: Any discussion? Yes, go ahead.

Mr. Bynum: Sorry to...I...I just...for the last two nominees, there were interviews held earlier this morning in a public session. Some of the information, I think, that was public was shared by the nominees. Both nominees are appropriately qualified for these positions and I'm very thankful that they're willing to step up as volunteers and so I just wanted to make that comment. Thank you.

Mr. Bynum: Thank you.

Ms. Kawahara: Yes, and again, we're having a great batch of people coming in to do this volunteer work. And I...it's good to see people that are so integral in their communities coming up. So, I...I think their being able to represent their whole...the whole island is excellent and I want to thank them on public record for all of their commitment to the public and their continued work in working with the communities. Thank you.

Chair Asing: Thank you. Councilmember Furfaro.

Mr. Furfaro: Yes and I agree with both Councilman Kawahara and Mr. Bynum about the candidates, their presence in front of this council today, and I also wanted to publicly thank Kawahara and Mr. Isobe for answering potentially what we will be looking at as a new application form going forward. Thank you, Mr. Chair.

Chair Asing: Thank you, any further discussion? If not, roll call please.

The motion for adoption of Resolution No. 2010-13 was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Asing: Thank you. Next item please.

Mr. Nakamura: Next matter are Bills for Second Reading. First bill for second reading is Bill No. 2317, Draft 3, a bill for an ordinance to establish a new Article 28, Chapter 8, Kaua'i County Code 1987, relating to small wind energy conversion systems. The Planning Committee recommended receipt of this bill.

BILLS FOR SECOND READING:

Bill No. 2317, Draft 3 – A BILL FOR AN ORDINANCE TO ESTABLISH A NEW ARTICLE 28, CHAPTER 8, KAUAI COUNTY CODE 1987, RELATING TO SMALL WIND ENERGY CONVERSION SYSTEMS: Mr. Furfaro moved for receipt of Bill No. 2317, Draft 3 for the record, seconded by Mr. Kaneshiro.

Chair Asing: Any discussion? Councilmember Bynum.

Mr. Bynum: Thank you, Mr. Chair.

Chair Asing: Oh, I'm sorry. Let me first have the public.

Mr. Bynum: Okay.

Chair Asing: I didn't know anyone who wanted to speak on this.
The rules are suspended.

There being no objection, the rules were suspended.

CARL IMPARATO: Good morning, Chair Asing, good morning, councilmembers. I'm here today to...first to thank the members of the Planning Committee who voted to receive this bill and to urge the remaining councilmembers to do the same. As you know, the proposed bill was extreme and unbalanced when it was introduced a year ago, and it remains extreme and unbalanced today. First of all, a year ago the bill had no credible noise standards to protect neighbors and that hasn't changed one iota over the past year. Despite the fact that the council has received much data from the literature that indicates that not all SWECS are quiet and that many of these require at least 100-foot setbacks to not create noise impacts on neighbors, but the bill remains unchanged. A year ago the bill offered no recourse to neighbors who would be hit with severe visual impacts and that hasn't changed one iota. The bill would still allow 25-foot towers on roofs on even the smallest residential lots just 10 feet from the lot line. The bill would allow 10 kilowatt SWECS with 22-foot diameter blades in residential areas. A year ago the bill proposed to override the standards of the North Shore Development Plan ordinance. That's the law that protects one of Kaua'i's most precious scenic and economic resources. The bill still contains that override. A year ago the bill included a loophole to allow SWECS to do an end run around state and federal environmental regulations related to protection for endangered avian species. The bill hasn't changed one iota there. So the bill continues to threaten the environment and create a major liability for the county, which is no different than if the county turned a blind eye to bad driving records when it gave out driver's licenses. A year ago the bill intentionally eliminated the possibility of public hearings at which neighbors could raise concerns about proposals to locate potentially noisy roof-mounted generators next door. That hasn't changed a bit. So in summary, the bill started out bad and it stayed bad.

So, I do want to thank the three members of the Planning Committee who voted to receive the bill. They are absolutely correct that we need to start over. I want to thank the councilmembers who voted in support of sound planning, Kaua'i's

residents and neighborhoods, and Kaua'i's overall environment. I want to thank the councilmembers who understand that public input, noise protections, protection...protection of sensitive view planes, protection of endangered species are not obstacles, but they're the hallmarks and essentials of sound planning. I want to thank those councilmembers who had the courage to not take the easy way out and for not jumping on the "all renewable energy is good" bandwagon regardless of the negative impacts of poorly drafted legislation. I want to thank those councilmembers for understanding that environmental leadership means rejecting this bad bill, not supporting this bad bill. I want to thank them for understanding that passing a bill that would create foreseeable harm to neighbors and to the environment, a bill that would create foreseeable conflicts between neighbors would not be good public policy and so I also want to, in closing, urge the remaining two councilmembers who were not on the Planning Committee to support that wise decision to finally put this bill to rest so that we can move forward with better ways to address the issue of reducing energy demand by first starting from the premise of do no harm to thy neighbor and the premise of having balance. So thank you very much.

Chair Asing: Thank you. Councilmember Kawakami.

Mr. Kawakami: Thank you for your testimony. I just want to make a statement. I don't think the bill...yeah, I voted to receive...I made a motion to receive, but I don't think the bill itself was a bad bill. I think it was a good bill with good intentions with some very, very hard to overcome challenges at this time. But I think the intent behind the bill was good. I know that the planner, Ka'aina Hull, worked diligently in addressing a lot of my concerns on the bill. So for me to say that I received it because it was a bad bill that would be far from the truth. I think it was a good bill with good intentions, but it did have some challenges, and so that's why I recommended that we receive the bill at this time. And part of my decision to receive the bill is because I was under the understanding that some bill would come up at a later time addressing the needs of the ag...the ag zoning sector. So, thank you.

Mr. Imparato: Thank you, and if I could clarify as well. You know, I agree with the intentions of the bill, agree that there are very appropriate places for small wind energy systems, particularly on ag lots, so I wanted to make that clear as well. Thank you.

Mr. Kawakami: Did you just say that you find it appropriate for ag lots?

Mr. Imparato: Right, I think there are very appropriate places for agricultural SWECS. Of course, in a...hopefully in a new bill that hopefully will come forward, it will include the necessary protections for people who still live near those ag lots, the next door neighbors to the ag lots who need to still have protection from noise and visual impacts and such.

Mr. Kawakami: Can you correct me if I'm wrong? Earlier, when this bill first hit the floor, I posed a question to both the Sierra Club, yourself, and Apollo Kaua'i, and how they would feel if we pulled the SWECS bill out of residential and kept it in commercial and ag, and if my memory serves me right, you were opposed to that. Is that true or is that not true?

Mr. Imparato: No, I think...

Mr. Kawakami: You're in support?

Mr. Imperato: Yeah.

Mr. Kawakami: Okay.

Mr. Imperato: To...to be very, very clear about it, and I believe I did send in a follow-up email...

Mr. Kawakami: Yeah.

Mr. Imperato: The issue wa...that I was making at the time was just pulling the residential out, pulling the open out of the bill would be inadequate to deal with the problems because then you'd still have ag lots where the next door neighbors to those ag lots or industrial lots still needed protection. So, it wasn't that we could just pull out the residential pieces. The point was it's good to have them on ag lots, but you still need to deal with the other concerns about avian impacts, noise, etc.

Mr. Kawakami: Okay.

Chair Asing: Thank you, with that, any... Go ahead,
Councilmember Kawahara.

Ms. Kawahara: May I see? Is that a written testimony?

Mr. Imperato: It's just my notes at this point.

Ms. Kawahara: May I...may I see it really quick?

Mr. Imperato: Sure.

Ms. Kawahara: Because I...I...

Mr. Imperato: (Inaudible) I can go down to the end, but that's okay.

Mr. Furfaro: Carl, can we make copies for the council?

Chair Asing: Are you...

Ms. Kawahara: I just wanted to say I take offense to what you said about...

Chair Asing: Why...why don't we do this then, staff, make a copy of that so that everyone has the same opportunity to look at a copy that is being questioned by a councilmember.

Mr. Imperato: It's a...by the way it's only the front sides of those pages.

Ms. Kawahara: Huh?

Mr. Imperato: It's only the front sides of those few pages.

Ms. Kawahara: Oh, the front side only, but um, the part where he was talking about...

Mr. Imparato: Correct...yeah...just the front, no the front sides of those two pages, not the reverse sides.

Chair Asing: We'll take a short recess, thank you.

Ms. Kawahara: Thank you.

There being no objection, the meeting was recessed at 10:23 a.m. The meeting reconvened at 10:33 a.m., and proceeded as follows:

Chair Asing: The meeting is now called back to order. With that,
Councilmember Kawahara.

Ms. Kawahara: Thank you, Chair Asing.

Mr. Furfaro: Excuse me, I think...I don't know if Carl was done with his testimony.

Mr. Kaneshiro: She had a question.

Ms. Kawahara: I had a question for Carl, yeah.

Chair Asing: Okay, go ahead.

Ms. Kawahara: Okay, thank you again, Chair Asing. Thank you for your testimony and I...I know from your testimony that you're glad that we're receiving this bill. I guess I just had taken a bit...a bit aback by the fact that you were stating that the people...the councilmembers that were trying to get this bill done and trying to have it function and workable, that we weren't into this whole list of sound planning, understanding public input, noise protection, sensitive view planes, endangered species, obstacles, and sound planning. I just want to say on the record, in response to what you just put on the record, that personally as a councilmember those are all things that I do take seriously and I...I'm saddened that you'd think that because we were working on this bill to make it successful that you think it wasn't...that we were not following those types of values. So, again, I think I believe in sound planning, I understand public input, noise protection, sensitive view planes, those are all considerations that go into evaluating the bill for myself. So I wanted to assure you and say that that...that...that was a little harsh because I've been supportive of all kinds of...all kinds of initiatives that support green energy, sustainability. So, I just wanted to address that and assure you that all the things that you raised in here as...as being things we might not...that we might be against because we're trying to do a bill like this needs to be considered. Thank you.

Mr. Imparato: If I could say...

Chair Asing: Thank you.

Mr. Imparato: I do appreciate...

Chair Asing: I...I'm sorry, are you through with your testimony?

Mr. Imparato: Oh, I didn't know if I was going to respond to that, but...

Chair Asing: Yeah, go ahead. Well, you can respond to that and if you're through, fine. I just have a couple of questions from some councilmembers, yeah. Go ahead.

Mr. Imparato: May I?

Chair Asing: Sure.

Mr. Imparato: Thank you. I just do want to clarify that I appreciate the many positive initiatives that you and Councilmember Bynum and others have taken over the years. My view on this bill is somewhat colored by the fact that there've been either nine or ten meetings of this council while this bill has been discussed. And while this bill has been discussed, there have been a number of proposals put forward to deal with the noise issue, the avian impacts issue and all of those other issues, visual issues, and the bill has not been amended to address any of those. So, given the length of time, the number of times it's been discussed, it seemed clear to me that the best thing to do is to receive the bill and therefore voting to receive the bill is voting to address those concerns. Having said that, again I do appreciate what you said about your sensitivity to those issues.

Ms. Kawahara: Thank you.

Chair Asing: Thank you. I...just one comment, Councilmember Kawahara, welcome to the world of opinions, welcome. You now...

Ms. Kawahara: Yes and I hope I was...I responded graciously.

Chair Asing: You now understand a little bit about process and how things happen, why things happen, so welcome to the world.

Ms. Kawahara: Yes, and now I'm playing with you.

Chair Asing: With that, Councilmember Furfaro.

Mr. Furfaro: I just wanted to make...make it clear that my...my perception of the committee that I chaired that brought this up as a recommendation to receive, part of that dialogue also included, so that we know, possibility of a new bill being introduced jointly by Councilman Kaneshiro and Mr. Bynum, jointly dealing with the ag and open areas. And I will be suggesting at that time that that new bill actually comes up in the Energy Committee, not Planning. When it was first Planning, it was dealing with the fact that, you know, it was intended to cover all areas residential and there could have been a number of conflicts with those kind of neighborhood plans. But the one that I'm still concerned with is the neighborhood plan on the North Shore that has the 25-foot height...height limitation. So, I did want to address that comment in...in your bill, but hopefully I'm correct in that assumption and how the committee left it. There'll be a new bill going through the Energy Committee. Thank you, Mr. Chair.

Chair Asing: Thank you. Any further... Go, go ahead, go ahead.

Ms. Kawahara: Point of personal priv...

Chair Asing: Go, go ahead...

Ms. Kawahara: ...privilege...

Chair Asing: Go ahead.

Ms. Kawahara: ...in response to your personal comment.

Chair Asing: Yeah, go ahead.

Ms. Kawahara: Thank you. I wanted to thank you for welcome...you welcoming me into this environment, but I wanted to let you know I've been here for a year and I have been working in this environment. So I don't really need the welcome and I have been working with a lot of people and a lot of conflicts and things too. So I can handle it, but I appreciate it. Thank you.

Chair Asing: Well, welcome to the world of opinions. You have an opinion, the speaker has an opinion, you happen to differ from that opinion, and I think you now understand a little more, so thank you. With that, can we...do we have a motion on the floor?

WILMA AKIONA, Council Services Secretary: Yes.

Chair Asing: Oh, Carl, are you through? I'm sorry. You...you're done?

Mr. Imperato: You tell me.

Chair Asing: Yeah.

Mr. Imperato: Am I through?

Chair Asing: Thank you.

Ms. Kawahara: Thank you, Carl.

Chair Asing: Okay, is there anyone else in the public who wants to speak on this item? I'm sorry. Go ahead, Glenn.

GLENN MICKENS: Thank you, Kaipō, for the record Glenn Mickens. I...I just want to sincerely thank the gentleman for...Carl, for his testimony, for his expertise and his...he did not...he's not just shooting from the hip. I think he's being very concerned about what's going on here. I don't hear one word of him being against wind energy, the same as me. I am...have...have no qualms about any kind of energy, whether it's hydro, wind, solar or whatever it happens to be. I think you had a gentleman sit here before that installs these things, and he said at this stage of the game, he said wind is miniscule besides high...besides solar, and he would...would...would recommend probably going more to home heaters, solar and etc. But again, I think wind is great if it's in the right place as I think Carl is pointing out and I think he has the expertise to do this. He's just trying to look at things from the total picture before you go ahead and say let's go ahead and do it. So, anyway I just want to thank Carl and...and thank you guys for receiving this and probably working on it to a better degree and...and putting the problems in place. Thank you.

Chair Asing:
speak? Mr. Taylor.

Thank you. Is there anyone else who wants to

KEN TAYLOR: Chair and members of the council, my name is Ken Taylor. I too want to agree with comments that Carl has raised and thank you for receiving this issue. I...I have no problem with alternative energy activities, but there has to be some really good thought out process as to how we move forward with them and there's a place for wind and there's a place for solar, and I don't think that small neighborhood lots are a place that should be potentially cluttered with wind mach...wind mach...windmills and we had testimony from an individual before you...some meetings back that indicated that she had gone forward with putting a windmill in place, never anticipated that it would ever pay for itself and that it was more of an environmental issue with her than anything else. And so under those circumstances, I think revisiting this...this process and...and us all working together to move forward with a good or better bill, I think is...is hopefully what will come out of this in the future. So thank you very much.

Chair Asing: Thank you. Is there anyone else who wants to speak on this item? If not, I'll call the meeting back to order and further discussion? Coun...Councilmember Bynum.

There being no one else wishing to speak on this matter, the meeting was called back to order, and proceeded as follows:

Mr. Bynum: Thank you, Mr. Chair. I want to say that...that this bill has been contemplated and was first introduced at this council on October 22, 2008. In that timeframe, there were a number of people who were applying for permits from the county for small wind energy systems. It was consistent with the national policy and the state policy as demonstrated by there being tax credits available. So at one level government is encouraging people to invest in alternative energy because we've moved into the energy climate era where energy will be a huge issue for all of us going forward for some period of time. We are currently more than 90% dependent on fossil fuels for energy and it leaves us vulnerable. But in the county level, people were applying for permits and the planning department didn't really know how to respond, didn't understand what the current state law was, and our citizens were confused about what they needed to do. And so it was in that climate that I first introduced this bill to say it's important for us to dialogue about all of these issues, alternative energy, oil dependency, the bird issue that I knew would be part of it, I had concerns about the county's potential liability given that we are the host of endangered species and we have a responsibility to them, and I thought it was important to have public dialogue. Since that time...in...the bill went through planning, had several public hearings. There have been, I can't count them all up but probably 15 to 20 public meetings where this dialogue has occurred, either at planning or at the county council. We've had a lot of excellent testimony from Mr. Imparato and many others about this bill and I think that our understanding about some of these issues is better.

The first bill that I sent to planning kind of increased the height limits pretty substantially because of testimony that says that the...that's where we can capture the wind and where we can do it. Through the public process and through the planning department's good work, as Mr. Kawakami indicated from Mr. Hull, the planning department recommended substantial changes to the bill, all of which I was accepting of. And they also put restrictions on wind that currently aren't in the ordinances. And so, I think what came out of planning in the long run was a pretty modest bill that was, you know, thoughtful and gave clarity to citizens who would

want to follow the government's incentive through tax credits to do alternative energy to clarify how you can do that process without it being cumbersome and an obstacle to doing that.

As we went on, as the bill came to council...excuse me, on June 3, 2009 we had a public hearing, we had...planning committee meeting was deferred one, two, three, four, five, six times, and it was amended...the bill was amended three times. As we came to this point, the last deferral was after an energy sustainability plan was presented, which has been presented, so it came back on the agenda.

In that interim period as was suggested by testimony, there was discussion about amending the bill to have it only apply to ag and commercial and larger lots, where wind energy systems have been an outright permitted thing on agricultural land in state law for many years. In the interim also, some of our friends and neighbors have gone through the current permitting process, have erected wind energy systems which are, you know, and we've had testimony that it's helping them with the sustainability of their business in ag, reducing their costs after the initial investment, and I believe that wind does have a future in our mix.

The...regarding the bird issues, that was one of the goals that I had at the beginning was to clarify those issues. And I took my guidance from the county attorney, who testified here that the...that the bill didn't have significant liability issues for the county. I don't agree that it's a loophole, the provisions that the planning department put in, but are consistent with current state...you know, I never saw any testimony that wind systems below 60 feet, which is what this bill would have allowed, are a significant impact to endangered species or anywhere near the impact...of many other items which we as a community have not fully addressed as of yet. I still feel like small wind has a...a place and I appreciate the comments from members that they want to reintroduce the bill.

Last week I sent testimony...I sent questions to the county attorney requesting whether it was necessary to reintroduce a bill. I think we've done a lot of work here through...beginning in October 2008 and there were amendments poised to be introduced that would further seek that balance. I don't think it's necessary to put forth...that forward in a new bill which will have to go back to planning and go through what, another year and a half of public process, and so I was seeking clarification on some of the concerns that got raised at committee last week that led to a recommendation to receive. I would like to...the members to consider that we defer this bill again until we get response from the county attorney about whether it's necessary to do an entirely new bill or if we can take the work we had and amend and build on it, to find that balance, so. I'd like to...my colleagues to consider, you know, there were many deferrals, we've been patient, we've worked on this. I'm asking for the courtesy of another deferral to get answers from the county attorney so we can make a wise decision about whether we should receive the bill and start over or amend it and avoid the...the difficulty of having to go through all those processes, including sending it back to planning again. So I'm going to make that request of my colleagues. Would...my colleagues allow the courtesy of another deferral until I can get these answers from the county attorney?

Chair Asing: Thank, thank you, with that, any further discussion?

Mr. Furfaro: Yes, I have.

Chair Asing: Yes, go ahead.

Mr. Furfaro: First of all, extending courtesies, I think one of the courtesies that I would like is not to be portrayed as perhaps someone who doesn't support wind. In fact, I support a number of energy alternatives, experiencing electric bills, in my business, over a quarter of a million dollars. Being implied that this was not a wise decision, I'm a pretty smart guy and I would like to say that when you send over a communication to the county attorney, then you have to send all of the proposed amendments which will define whether the bill needs to be reintroduced or not, giving the county attorney all the facts that you believe that are necessary. In one statement we're saying the state has certain rules and in the next statement we're saying that the state is very unclear. We're saying that we understand the avian, the bird issue, but yet the federal government is changing rules as we speak. There is nothing that addresses the decibel reading, there is nothing in the bill that deals with, you know, the neighborly courtesies about sound. It also doesn't address the North Shore's height limitations, which members in my family fought for over many generations in public service. But I would like to say that the courtesy that I would like to extend is to move it to another committee. If ...if that committee's intention is truly and was created for the purpose of understanding what we need to strategically do about energy, we created our own energy committee. It started out in planning because like I said, the many issues that deal with residential rules and the challenges we might get from various citizens. So I'm encouraged that we would receive this bill and focus on some of the items that need amending and focus on what we know the state do...excuse me, does support in the way of agricultural activity. I think that's the good way to go, the best way to go, and putting it in the energy committee is also very effective. So, I would like to encourage the move to receipt, look for the new bill being created that I thought we agreed on, and have it put into Mr. Kawakami's committee. So, I would vote to receive.

Chair Asing: Thank you, any further discussion? If not...I'm sorry, go ahead.

Mr. Kaneshiro: Just, just really short, Mr. Chair. I want the public to understand that currently they can still apply. They can apply, you know, to get windmills, whether in ag lands or residential lands. This bill...what this bill would have allowed them is to go above the height limit of what, you know, certain areas have. And instead of going through the process of a use permit, instead of going through the process of a public hearing, this would be where it would allow you to go a little bit above the height limit requirements. So I want people to understand that in no way that this bill at any way stops you from moving ahead, to move ahead and look for doing windmills. And I think, you know, with this...a lot of discussion we've had, I think it's clear also to the planning department that if we do have applications that come forth that don't need a use permit, I'm certain that they can deal with it. They can deal with it because we've had a lot of discussions here and you know, I don't want to discourage the general public from saying that because we didn't vote on this bill that means we're not supporting energy. Basically we're not voting on a bill that allows over the height limit until we come out with a bill that we feel that would allow this in appropriate places and that's the point I want to make. So...so with that, I'm ready to vote to receive this bill, Mr. Chair.

Mr. Furfaro: I'd like to call for the vote.

Chair Asing: Thank you, with that, roll call please.

Mr. Furfaro: The motion is to receive.

The motion to receive Bill No. 2317, Draft 3 for the record was then put, and carried by the following vote:

FOR RECEIPT:	Chang, Furfaro, Kaneshiro, Kawakami, Asing	TOTAL – 5,
AGAINST RECEIPT:	Bynum, Kawahara	TOTAL – 2,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Asing: Next item please.

Mr. Nakamura: Next bill for second reading is Bill No. 2328, a bill for an ordinance amending ordinance no. PM-227-91, relating to the state land use district boundary in Kilauea, Kaua'i (County of Kaua'i, Applicant). Planning Committee recommended approval of this bill.

Bill No. 2328 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. PM-227-91, RELATING TO STATE LAND USE DISTRICT BOUNDARY IN KILAUEA, KAUA'I (County of Kaua'i, Applicant): Mr. Furfaro moved for adoption of Bill No. 2328 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Kaneshiro, and carried by the following vote:

FOR ADOPTION:	Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Asing: Next item please.

Mr. Nakamura: On page 4 of the council's agenda, next bill for second reading is Bill No. 2329, which is a bill for an ordinance amending ordinance no. PM-228-91, relating to general plan designation in Kilauea, Kaua'i (County of Kaua'i, Applicant). Planning Committee recommended approval.

Bill No. 2329, Draft 1 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. PM-228-91, RELATING TO GENERAL PLAN DESIGNATION IN KILAUEA, KAUA'I (County of Kaua'i, Applicant): Mr. Kaneshiro moved for adoption of Bill No. 2329, Draft 1 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Furfaro, and carried by the following vote:

FOR ADOPTION:	Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Asing: Next item please.

Mr. Nakamura: Next bill for second reading is Bill No. 2332, Draft 1, a bill for an ordinance amending Chapter 12, Article 6, Kaua'i County Code 1987, relating to the energy code. Public Works/Elderly Affairs Committee recommended approval.

Bill No. 2332, Draft 1 – A BILL FOR AN ORDINANCE AMENDING
CHAPTER 12, ARTICLE 6, KAUAI COUNTY CODE 1987 RELATING TO THE
ENERGY CODE

Ms. Kawahara: Mr. Chair?

Mr. Kaneshiro: Move to approve.

Ms. Kawahara: Mr. Chair?

Chair Asing: Yes, go ahead.

Ms. Kawahara: I...

Chair Asing: I believe we have some amendments?

Mr. Kaneshiro: I needed to make a motion first before we can
discuss any (inaudible).

Ms. Kawahara: Oh, okay.

Chair Asing: Okay, go ahead.

Mr. Kaneshiro: So my motion would be to approve this bill.

Chair Asing: Can I have a second please?

Mr. Kawakami: Second.

Mr. Kaneshiro moved to adopt Bill No. 2332, Draft 1 on second and final reading,
and that it be transmitted to the Mayor for his approval, seconded by
Mr. Kawakami.

Mr. Furfaro: I'm going to recuse myself since there's going to be
amendments.

Chair Asing: Yes.

Mr. Furfaro: I'll step out.

(Mr. Furfaro was noted recused from the meeting on Bill No. 2329, Draft 1.)

Chair Asing: Okay.

Ms. Kawahara: Sorry about that, Daryl.

Chair Asing: Yeah, we have a motion to approve, we have a
second, and I believe we have an amendment.

Ms. Kawahara: Yes.

Chair Asing: Yes.

Ms. Kawahara: And they're going to pass it out.

Chair Asing: Okay, why...why don't we do this first, take public testimony first. Is there anyone in the public who wants to testify on this?

There being no objection, the rules were suspended.

Chair Asing: If not, thank you. I call the meeting back to order and we're going to entertain some amendments, I believe.

There being no one in the public wishing to testify on this matter, the meeting was called back to order, and proceeded as follows:

Chair Asing: Yes, go ahead, Councilmember Bynum.

Mr. Bynum: I have an amendment. It's just a housekeeping amendment. The staff picked up a misspelling of one word in Section 405.3, so I'd like to move to amend as circulated.

Mr. Kawakami: Second.

Mr. Bynum moved to amend Bill No. 2332, Draft 1, as shown in the Floor Amendment attached hereto (Attachment No. 1), seconded by Mr. Kawakami, and unanimously carried (Mr. Furfaro recused).

Chair Asing: That amendment passes. We have another amendment.

Ms. Kawahara: Chair?

Chair Asing: Go ahead.

Ms. Kawahara: Yes, thank you, Chair. This is an amendment that...that I wanted to introduce. I'm introducing it at the council because I wasn't in the...I'm not in the committee, so that's why it's coming through the council. It's a recognition of the amendment that was made previous to this with Derek Kawa...Councilmember Kawakami, who amended it to...amended the code so that the wall insulation would be exempt from the code for every unconditioned habitable space. And one of the main concerns that mister...that Councilmember Kawakami had was for the private sector and the people that would be buying in the private sector and the cost that may...it may entail to require them to do wall insulation. I...we do have numbers on the cost of wall insulation that we'll be showing later, but the fact that he was concerned with the private sector and not putting a cost up front whe...and that amendment was made. This amendment is dealing with a carveout for affordable housing and gap housing, which says that anything that's developed by us, the county, should be required to do wall insulation based on the best practices that we've received in reports that we're going to have a PowerPoint on also. So, that's the basis of that. It was recognizing the private sector, people would be having choices, but in the affordable housing market, what they get is what we build. It is not that they get a choice of what they want to put in or any kind of comfort level that they might want as an extra. This is something that they're going to get as affordable housing people that are at the poverty line or very close to it. So this will allow that we follow a best practice in our county...county buildings for affordable housing, where it has shown that wall insulation makes the home more comfortable, more livable and therefore, the people that are living there are living in affordable housing that is comparable or as

comfortable as anything that would be in the private sector. So I wanted the council to consider that and I'm not sure how it works after this, if you guys want to look at it or have any questions.

(Inaudible.)

Mr. Bynum: I'm going to take the floor.

Chair Asing: Oh, you're going to do the presentation?

Mr. Bynum: I'm going to do the presentation.

Chair Asing: Oh, okay. Councilmember Bynum.

Mr. Bynum: Just one clarification. This amendment would apply to county built housing and also housing that's built as a result of our housing policy, which requires affordable housing to be built when market housing, we discussed that earlier, so.

And before we have the lights off, I don't need the lights off to begin this, this is a bill that came through the public works committee and is something that I've been tracking for three years or more and it comes from our efforts to conserve energy. And there's a really fascinating and interesting story behind this and so I want to share that because it will possibly impact the outcome of the vote for this amendment.

The...whenever you go to energy sustainability conferences, one of the first things that comes up is the...the first line is conservation. It's better to conserve energy and not have to generate it in the first place. That has the b...is the most cost effective. And whenever you ask questions about what is...what's the most important thing to do at the county level, often the answer is to look at the building codes. And there's a movement around the world to change buildings to make more green built energy efficient buildings to begin with because if you build a building that's energy efficient to begin with, you save for the life of that building, which is anywhere between 75 and 100 years. So, when...so there's been efforts to examine the building codes in Hawai'i that have been underway for several years that result in us and the bill that's before us, the...which is adopting the International Energy Conservation Code. You know, that's a code that's used internationally obviously from its name. But there was concerns that the bill meet the culture, meet the climate and deal specifically with Hawai'i. And so those efforts have been underway for some time. So, our Building Code Council which includes our county's building code people have been meeting for over a year and a half with leadership from the Department of Business, Economic Development and Tourism to take the International Energy Code and to make mod...whatever modifications would be necessary for the coun...for the climate and culture of Hawai'i. And I want to commend those folks for their diligence and for working on that issue. The...and as a result, we have an International Co...the...this code has been adopted by the other three counties and this is our opportunity. I'm sure we'll adopt it in some form today.

The issue that's really before us is about wall insulation, and I want to explain the history of that and present some outcomes of some studies that DBEDT have done because I think it's important that we honor the recommendations, from my point of view, that our building code professionals are giving us and that our Department of Business Economic Development and Tourism's energy expert is

recommending. So, the bill that initially came over from the administration had all of the elements as recommended by the Building Code Council with one exception and as a result of communication that came from the Contractors Association of Kaua'i, dated September 23, 2009 to the Mayor, who expressed some concerns about the insulation mandates or the heat gain that buildings experience in particular. And so there's kind of an old school thought on this that for many years Kaua'i didn't require any envelope for heat gain or for insulation and the thought was that we live in a moderate climate, we don't have extremes of heat and cold, and so why do we need to insulate the buildings. And indeed most of our homes are built without any central air or heating studies. And so that kind of has face validity. It makes sense on the face that...on the face of it that, you know, why insulate? In fact, a letter that came from the contractors association as part of the county council's thing makes just that argument. It says, the Contractors Association of Kaua'i does not believe that mandating roof insulation is in the best interest of Kaua'i citizens. Insulation is used to protect against extreme seasonal temperatures, both heat and cold. Kaua'i, as a tropical climate zone, is not prone to these extreme temperatures and insulation does not become necessary to protect the public health and safety. So they go on to say that they're concerned that this mandate would increase the costs needlessly and...so and I, you know, I've heard the argument for a number of years and as I tracked this and talked to the building code professionals and the energy specialists, you know, I posed the same question, well why do we need to insulate in Hawai'i. And so they've been dialoguing and studying this for some time, and their answer was pretty compelling and I want to share that answer, but also the history of this bill.

It came over to us initially following all the recommendations that came from our Building Code Council and DBEDT with this one exception that it exempted housing that was built affordable as a result of either our affordable housing policy that we passed last term or that the county build. So...and I think we spent some time dialoguing about that. We had testimony from Habitat for Humanity that basically said they did not want that exemption, they already were meeting these building and insulation codes because they understood that it was the...in the best interest of the people who would end up living in the homes, both in terms of energy savings and in terms of comfort and livability of the homes that are built. And so, you know, last time the council entertained an amendment to eliminate that exemption for affordable housing and it passed. It didn't make sense, in my view, to exempt affordable housing, and our housing department, you know, gave testimony to that extent and so initially the mayor put that provision in, but as he looked at it further, he didn't object to us not exempting affordable housing. So...but then there was an amendment to exempt wall insulation for everyone. So, and that's what happened at our committee last time, that despite the recommendations that we do this and I want to introduce this...the idea of a heat gain, that you use roof insulation and barrier...radiant barriers and wall insulation and other mechanisms to keep the temperature in the home at a moderate level. The concern is, and we had testimony from Howard Wiig, that, you know, Hawai'i homes were generally built with that in mind. I know I built my home and my architect and contractor said, why you want to insulate these walls, you want to have good breeze through your home, you want to situate it properly on the lot to catch the trades so you can have a comfortable home, but you want to make sure you do this insulation, and so I did and others did. Many contractors know that and understand that and have done that in Hawai'i. But on O'ahu a lot of hou...a lot more kind of urban housing has been built than here by larger companies who kind of didn't take all of those considerations into mind, and used kind of mainland style, but the building codes didn't require insulation. So if you're in business and you're building homes, you're probably not going to put elements in there that are not required. And...and so

Howard Wiig was here saying that many homes that were built in the 'Ewa plains that they received lots of complaints from people who said, I come home from work and the house is just boiling, I cannot stay in it, it's too hot, you know, we go into the back yard. So we put air conditioning in. We went out and bought air conditioning because it's too hot. And that got DBEDT and others looking at this issue of insulation. Why would you want to do that in Hawai'i and why...how does that pertain to sustainability. So, we started with an exemption for affordable housing, we agreed that we shouldn't treat affordable housing differently, but then the council exempted everyone from the wall insulation component.

So with that as a backdrop, now Councilmember Kawahara is suggesting, hey, let's make sure affordable housing built for the citizens of Kaua'i, and it's not just affordable, it's gap group housing that because as we said earlier today, even people making 120% or 130% of median income, the affordability gap is so great that we haven't...that there isn't housing readily available. As a result of that, we have a housing policy that requires affordable housing being built. So this amendment says, when that housing is built as that requirement, it should include the heat envelope, including wall insulation that's been recommended by these people. So with that as a backdrop, I'll start the presentation and I'll try to be quick.

The Department of Business, Economic Development and Tourism sponsored a study in 2001, I believe, and reported in 2002 to just address just this issue. It's called the Hawai'i BuiltGreen Home and so what they did is they built two homes in Waianae, same square footage, same orientation on the lot, everything the same except one had the roof and wall insulation and the other did not. And I'm...not seeing these slides.

(Inaudible.)

Mr. Bynum: Okay, so this is a...I know you can't see this, but it's a...it's a 64-page study which I've read, but there's a 2-page synopsis and this is what the coversheet looks like. What it says is that an analysis by the Honolulu Chapter of the American Institute of Architects for DBEDT shows how well the cooling technologies of radiant barrier and natural ventilation is in the Hawai'i BuiltGreen Home to work to make the home comfortable without air conditioning. In the chart below, temperatures on the Hawai'i BuiltGreen were with wind...are within close of the comfort zone of 73 degrees to 85 degrees. So the idea is that a comfort zone, and we all can climatize in Hawai'i, 85 might sound hot to somebody in California who says turn the temperature down to 72 on the thermostat, but we all climatize and we catch those trades and we want to save energy and so that comfort range is 85. So this chart is from the study. It shows the Hawai'i BuiltGreen Home, the control home, and the difference. So, when the exterior temperature is in the mid-80s, okay, in the Hawai'i BuiltGreen Home the attic top position with...that's insulated, that has this radiant barrier, is 88 degrees. In the control house, the attic top position is 105 degrees or a 17-degree difference. Now that's up in the attic, that's not where we live, but you know, the old thought was well we don't have those extreme temperatures. But when the temperature is in the 80s and with...you know, in these confined spaces, it can get up to 105 degrees.

But what's more important is where we live, in our bedroom, in our living room, in our dining room. So the second column here has a bedroom and we all know that west-facing gets more sun than east-facing. And so another thing I've heard from people is well make sure you insulate the west-facing walls, that that's more important. But in this study, the bedroom in the Hawai'i BuiltGreen Home

and it was at 5:15 p.m. was 84 degrees or in that livable range. The temperature in the control home without the insulation was 102 degrees and I think that's a very substantial difference. I can handle 85 degrees, maybe even 90, but 102, I don't want to stay in that room.

But let's look at the next column has the dining room on the east-facing side of the house that we consider to be the cooler side. In the Hawai'i BuiltGreen Home again it was 84 degrees, but in the control house it was 94 degrees. So we're talking about temperature differences between 10 and 18 degrees in terms of the livability of the home.

What Mr. Wiig said was those folks couldn't handle living in 102-degree room and they were either camping outside in the evening or they were going out and purchasing window air conditioning and then putting that window air conditioning or retrofitting central air into a home that's not insulated. So it will use a lot more energy as we attempt to keep it there.

So the reasons for doing this insulation are livability, the comfort and livability of individuals. I don't think it was a good decision for us to exempt any homes from this radiant barrier. And we had testimony here from the architect saying that one of the things they liked about the International Energy Conservation Code is it doesn't just say you have to put this insulation in. It says put this insulation or meet the heat gain goals, and there are many other ways to meet those heat gain goals, by the way you position the home, by what kind of paint you use, by what kind of barriers. Insulation is a known and cost effective way to do it, but there are other areas so that the...you know, based on that testimony, our building division went back and met with DBEDT, met with the architects and said, you know, and we put clarifying language that was in a...an amendment that you can meet that heat gain in other ways and if you certify that, you don't have to be this rigid kind of only one way to do it. So I appreciate that flexibility and we have testimony from Palmer Hafdahl, an architect, who spoke on behalf of the architects, and he said and I'm quoting, as a longtime advocate of radiant barriers applied with good ventilation, I'm pleased to find that this particularly Hawaiian form of passive thermal control clarified and promoted and is an acceptable alternative to bulk insulation to exclude this low-cost, effective and healthy practice in much needed affordable and gap group housing, is to put a further burden on the interim occupants who are our friends and neighbors.

So, this bill started out saying we're going to exempt affordable housing from this comfort level and from this requirement for the radiant gain and the council amended it to say we're going to exempt everyone from it. And so in our dialogue last week at council, you know, we debated this back and forth. You know, one of the...the argument was well we want to preserve...we want to keep cost low and we want to preserve choice for individuals, okay, so. This project, by the way, was participated in to...by the U.S. Department of Energy, the State Department of Business, Economic Development and Tourism, State of Hawai'i Department of Home and Land...Hawaiian Home Lands, Building Industry Association of Hawai'i, the Honolulu Chapter of the American Institute of Architects, the Hawaiian Electric Company, and Honsador Lumber Corporation. And they're not...these lists are not necessarily endorsing, you know, requiring envelopes, but they were participants in the study that showed those heat differences in homes.

You know, the other concern we had was about the additional cost and contractors said the additional cost was anywhere between \$2500 or \$4,000. We had other testimony saying, no, it wasn't that high, but what we're focused on today

is the wall insulation requirement because that's what we are attempting to exempt. And so on a 1600-square foot home, you would need 1280 square feet of wall coverage. This chart shows from the Contractors Pricing Guide of 2009 that materials and installation of the required installation in walls for a typical 1600-square foot home is \$832, and so the cost savings...there clearly is cost savings of \$832, yet the Energy Sustainability Plan says that an unairconditioned home can save \$1,320 per year in lower energy cost to keep from using air conditioning. So, that's the end of the visuals, but basically, the cost savings is \$830 up front. If you don't do that, you're going to live in a home that is much hotter. That's what our...the study shows. I believe if you live in a home that's very hot, you're going to have an incentive to go out and purchase a window air conditioner, and then there will be substantial energy drain.

Although I heard the argument about choice, obviously if someone builds their own home, they can choose. If we, you know, if we require the insulation as recommended, people have to do it. But if we exempt it, then they can make a choice. I asked last week, what about housing that's built for market, for sale, and the response, as I recall, was well the customer...you know the contractor who builds those homes is...is accountable to their customers. So, you know, in that...we saw that experience on O'ahu where people bought new homes and said I can't live in them. And again, I think that O'ahu has amended to require that insulation to avoid those businesses from having the problem. But housing that's built as...and this amendment is to say we're not going to exempt housing built for affordable and gap group housing as a result of our housing policy. Who's accountable there? And who's accountable there is the County of Kaua'i through our building codes. You know, we're...in a typical scenario, a contractor would be building housing for market which may be sold, you know, over a million dollars and our housing policy says if you're going to build housing on Kaua'i at market level, a percentage of that has to be affordable for working families. That's our workforce...that's a very brief overview of our workforce housing. But the standards that we set for that affordable housing is set by the County of Kaua'i. We are the responsible parties. And I as a councilmember who is responsible for that want to make sure that homes that are built as a result of our affordable housing meet the radiant barrier gain and it can either be doing that by meeting the insulation or under the building code having alternative methods certified by an architect. I want to make sure when we are responsible to build affordable housing, it's livable, it's comfortable, and it doesn't incentivize people to install air conditioning into an uninsulated home. That's why I think it's a responsible decision to vote for this amendment because we are accountable for the housing built for affordable and workforce housing. Thank you for your patience and...

Chair Asing:
Councilmember Kawakami.

Thank you, with that, any...go ahead,

Mr. Kawakami: Just a question on the data you gave us. The two test projects, one house was green built and the other was not green built. Did both of them have roof insulation, which we are mandating?

Mr. Bynum: No, the roof...

Mr. Kawakami: Well, then, if it...

Mr. Bynum: May I answer?

Mr. Kawakami: Okay, sure.

Mr. Bynum: The one house had no roof or wall insulation. The other house had roof and wall insulation.

Mr. Kawakami: So one house didn't have any insulation at all?

Mr. Bynum: That's correct.

Mr. Kawakami: But we're mandating roof insulation, which your consultant, DBEDT's consultant, said is the number one way to cool a house. So you're giving the people data that to me is not necessarily accurate when we're discussing this matter because we're requiring the number one way to cool a house is to cool the roof. We're requiring that. So if you're going to make a comparison between test pilot projects, it should be one house with roof insulation and wall insulation and another test with roof insulation without the wall insulation, and then measure the attic.

You know, and then, you know, we pull out quotes from the Contractors Pricing Guide, where...is that a Hawai'i based Contractors Pricing Guide?

Ms. Kawahara: It's what...

Mr. Kawakami: Is that a....

Ms. Kawahara: Yeah.

Mr. Kawakami: Is that a mainland...

Ms. Kawahara: It's used here.

Mr. Kawakami: It's used here?

Ms. Kawahara: I worked with a carpenter, professional carpenter.

Mr. Kawakami: Okay, I work with a carpenter too. And...I mean, so it's just, you know, it's just different quotes, yeah, but I mean, and that's where it's at and I mean, for me, we just had a presentation and it said the strongest demand for affordable housing is at the lowest income group, the lowest income group that makes \$46,000 for a family of four, \$46,000 for a family of four. I want to put roofs over their heads without having to raise the cost. And a mandate, yeah, it does exactly that. It raises the upfront cost and you can make the argument that oh, over the course of the mortgage or over the pay...over the course of 10 years, you know, it pays itself off, but the upfront cost is the struggle and that's the reality, you know. So we take into account the data that was presented to the public saying that oh, a house with no roof insulation has a what, 103-degree temperature. Of course, but that's not the question at hand. We're requiring the number one way to cool a house to insulate the roof, we're requiring that.

Everything else, I've talked to architects too, you know, you bring in quotes that AIA has stated this. Well, I've talked to architects that are in AIA and they said the number one way to cool the wall of the house is to shade it, to shade the walls. They're not saying that it's not going to be necessarily be effective to insulate the walls, but they also said it's not necessarily the number one factor in cooling a house.

We talk about energy conservation, when you take a look at Hawai'i, we're the only state that has a solar water heater mandate. According to a lot of electric companies, that's the number one way to conserve energy. So, we already have mandate number one, which adds to the cost. We're going to mandate roof insulation, which adds to the cost, which I'm not against because like Mr. Wiig said that's the number one way to cool your house down, okay. We even have, I believe, in this energy code and correct me if I'm wrong, we have requirements for windows, we have requirements for lights, and these all serve a purpose to conserve energy, but the number one is the solar water heater mandate and also insulating the roof.

And...I mean...so I understand where you're coming from. There's value, but where I'm coming from is man, the biggest demand for affordable housing, yeah, is in that group that can...that makes \$46,000 for a family of four.

Chair Asing: Thank you.

Mr. Kawakami: Um, so sorry.

Chair Asing: Go ahead, finish up, I'm sorry.

Mr. Kawakami: I have a couple questions. How many affordable housing projects, yeah, have not been insulated? So, is Pa'anau not insulated? Is Kalepa not insulated? How about the Waipouli project, is that not insulated right now or have they chosen to insulate their walls on their own? I'm not sure.

(Inaudible.)

Mr. Kawakami: You're not sure either.

Ms. Kawahara: Why?

Mr. Kawakami: Why? Because my point is...I mean if they're doing it on their own, why mandate it? Because a mandate will drive the cost of goods up. It will drive the cost of goods up.

Chair Asing: Thank you, with that...

Mr. Kawakami: Hold on, I still got some more.

Chair Asing: I'm sorry, go ahead.

Mr. Kawakami: Actually, I'll turn the floor over because I can't find my notes, so go ahead.

Chair Asing: With that, Councilmember Bynum.

Mr. Bynum: You know, I appreciate this debate and Councilmember Kawakami is correct. The cons...the ener...the study included roof and wall insulation and I agree that the roof insulation is probably more important than the wall insulation. But the recommendation of our Building Code Council that has been accepted by all three counties is for roof and wall insulation. The study says in another section, this result of this analysis shows how homeowners can save money and live in comfort without air conditioning if they use the three big bang technologies as demonstrated in this Hawai'i BuiltGreen Home: utility approved solar water heating, that's one of the cost...biggest cost savings; radiant

barrier or insulation in the ceiling and walls; and natural ventilation. The amendments that our Building Code Council made to the Energy Sus...Code addresses that ventilation issue very clearly. You know, if we applied mainland standards, you couldn't have жалousies for instance. But we know жалousies are efficient at bringing air in and so they've made amendments for Hawai'i to allow жалousies to meet this, one of those three big issues, but they felt...but they recommended wall and roof insulation, that's the radiant barrier, and they agree with you that there are other ways to accomplish that goal. You know, you can have larger overhanging eaves that shade the walls; you can put in paint that reflects radiant barriers. What the Energy Code...what they recommend is you meet that code, but it allows flexibility about how you meet it. It doesn't require wall insulation. It says if you have designed this in a way that you meet that envelope code, show us and you're free to build that way.

You know, to me, I don't think it was a wise decision to not go with the recommendations that constitute the three big bang technologies. And I particularly am uncomfortable with allowing affordable housing that's built as a provision of our county ordinances that doesn't meet the recommendations of the energy folks and the Building Code Council. The...in terms of our affordable housing that we build, I feel confident that we did building insulation and solar water heating because if the county's building it, then we are accountable for what we build, say at Pa'anau or at Kalepa Village, and I'm sure that we will put those provisions in there to meet the recommendations of our building division. It's those houses...homes that are built as part of an affordable housing policy that unless...the place where we can be held accountable for that is in our ordinances, in this ordinance. So, this is a good amendment that says if you build affordable housing as a result of the ordinance that the county has, you have to meet the recommendations of the Building Code Council for comfort, livability and energy efficiency.

Chair Asing:

Thank you, any further discussion?

Mr. Kawakami: You know and I just want to say too then, you know the...for the people that watch the presentation, that description between the two pilot projects is not accurate. It's not comparing apples to apples. It's comparing apples to oranges. It doesn't give a true test or true temperature of what the scenario would actually be with our requirements, so keep that in mind.

And you know, I think you know, if the housing agency wants to negotiate with the developer that's creating these affordable housing projects, eh, let them negotiate. If they want to require it, you know, they can require it. If a big affordable housing project comes through, it's got to go through planning commission anyway. If they want to be responsible for mandating higher cost to the affordable housing project, let the burden be on them. They can go ahead and do it. They can condition it in. It goes in front of planning, housing can negotiate with the builder, but I, personally for me, one person, don't want to mandate higher cost at this time. I mean, we get data that \$46,000 for a family of four. I want to keep the cost as low as possible for them. You know and if they're telling me, yeah, if they're telling me that, eh, most of these housing projects are insulating the walls anyway, yeah, why would I mandate something that's already being done? Why would I do that? That would just unnecessarily raise the cost. I mean because now it's a requirement and you know...and that's where the bottom line is. It's just two schools of thought, you know. I appreciate your school of thought.

Ms. Kawahara:

Okay.

Mr. Kawakami: But you know, let's give the people the real data. I mean, we're comparing apples to oranges with that study. I mean it's really, really not giving us a true picture. You quote 103 degrees, you know, absolutely. If it was a matter of health and safety and if people were dying from heat stroke...if we were in an area that people were dying from heat stroke or dying because of the harsh winters, absolutely. Let's require it, let's mandate it. But in Hawai'i, on Kaua'i, nobody's dying from heat, it's a matter of comfort, okay. It's a matter of comfort and now it's a matter of dollars and cents. That's where I'm coming from.

Ms. Kawahara: Okay.

Chair Asing: Thank you.

Ms. Kawahara: So.

Chair Asing: Go ahead, Councilmember Kawahara.

Ms. Kawahara: I...so I did the introduction to this and now I want to do my discussion...introduction.

Chair Asing: (Inaudible.)

Ms. Kawahara: I did an introduction to the amendment, but now I want to do my discussion.

Chair Asing: Yeah, go ahead.

Ms. Kawahara: Okay, thank you, Chair. I've been listening and I also had spoken with Kaw...Councilmember Kawakami and I think that is the crux of the issue and why there's two different philosophies here. In the past, I believe that affordable housing has been stigmatized and that we want to...people want it to have the least, you know, basic minimum standard. So when you're talking about safety and people dying of heat, to me that means well, affordable housing as long as they're not dying of heat, then it's okay. I might be wrong, but to make our housing less than minimum best practices as affordable housing that we build as a government agency to help people at a po...at an economic level that is close to poverty or 100%...120%, it really speaks to the responsibility of a government to have a long-term responsibility for the people that are going to be living for 30 years in that building. To be able to live in your home comfortably, to have a house...have a roof over your head is to provide dignity. To do any less than that is something that I think the government is actually...does its checks and balances. Because when we talk about the private industry, yes, and the amendment we made, anybody that can afford to do it on their own they have the option of opting in to buy the insulation or not doing the insulation. But when we have affordable housing and people applying for affordable housing, they don't have an option. What they get is what we provide. And as a government agency, I would provide what is commonly accepted and I do accept this study as a good indication of what it would be without wall insulation. So, what I really do want to say is that there's always going to be tension between the private sector and the public sector and that's...I think where we're at. Whether or not the costs are going to be up front, taken up front or at the back end, it depends who that is. If you're going to save the cost up front, that'll save the cost to the contractor and builder and the developer, but who is paying it in the back end in discomfort, having to put out extra money to get a fan or maybe even having to buy an air conditioner. So, my balance was that okay, we'll give the public...the private sector that ability to do the option as the

amendment is that we passed, but for affordable housing where people don't have that option, where they are applying to get housing because of their economic level and their social standing in economics or wherever, they have to apply and they have to meet standards. And these are people that are at low income levels. They do deserve dignified housing, comfortable housing that they can be proud to live in. And in...as a county, it is, I think...and a government, it is our responsibility to see affordable housing as not just affordable housing for this carveout group, but affordable housing is public...is a public realm that affects the whole public because we drive by it, our friends live in it, and it's a visible public facility. So, in that sense it's a public utility that we need to be able to show that we are going to be running efficiently and that the people that are living in it are deserving and get the actual comfort that they deserve to be living in those homes. And the costs up front, again, is where we're having this discussion. I would like to require that the government follow the best efficiency rules that we have in the study because I choose to accept that study. What else do I want to say? So, so again, this constant tension between what the private sector wants to do and what the government should be able to provide. It's a...to me it would be responsible social housing policy to do that, to endorse a study that says, wall and roof housing are the top...one of the top three technologies that make living comfortable. So when people are required...have to go into a living situation in affordable housing, they don't get that choice, but our bill does allow for other people that don't need to do affordable housing to have that choice. Thank you.

Chair Asing: Thank you, with that...(inaudible). You want to respond first.

Mr. Kawakami: Yeah, yes.

Chair Asing: Yeah, go ahead.

Mr. Kawakami: Are you implying that I'm saying that affordable housing residents...that I'm implying that oh, as long as they're not dying from heat it's okay.

Ms. Kawahara: No, no, no, I just was saying...

Mr. Kawakami: Okay, I want to make it clear...

Ms. Kawahara: Yeah.

Mr. Kawakami: ...because it sounded like you were implying that and it can go both ways. I mean I can imply things that I don't necessarily want to do, but I just want to make it clear to the public...

Ms. Kawahara: Yeah.

Mr. Kawakami: ...yeah, if you're implying that or not.

Ms. Kawahara: No, no.

Mr. Kawakami: Yeah. You know, I mean...that's fine. Your belief is great. For me, getting housing over somebody's head is the greatest thing we can do to restore their dignity, bottom line, getting roofs over their heads. We got a housing policy that, in my opinion, restricts any kind of affordable housing development from coming into Kaua'i from here on out. I mean, it's...it's...it's...I

don't know of any developer willing to come into Kaua'i when there's other places they can go to stimulate other places' economies that are not as restrictive as ours. So why at this time am I going to make it more restrictive? The bottom line is we're in a time...an economic time where we should be looking at creating opportunity, not placing mandates on it to further restrict opportunity. And...and...and that's my school of thought. It comes down to cost. To me the greatest dignity we can do is give people of all income brackets the opportunity, yeah, to achieve the American Dream. You ask people what the American Dream is, is to one day own their own home, to have a roof over their head. That's the biggest dignity we can do to restore their spirit. Opportunity knocks, are we going to be the ones willing to create opportunity or are we going to be putting on mandates to restrict opportunity? I think the economic times call for a different school of thought. And that's my philosophy and I respect your philosophy, but at the end of the day, we'll let the chips land on the table and see who has the votes.

Chair Asing: With that...

BC, Videographer: Check your mike.

Chair Asing: Councilmember Bynum and then
Councilmember Kaneshiro.

Mr. Bynum: Just a couple points before we get to the vote. One is just to clarify, this is about workforce housing. We have a housing policy that we voted in last year that requires somewhere between 15% and 30% of new housing development to be affordable to the working class, all the way up to 140% of median income. We're talking about families, you know, on the very low end, and we (inaudible) heard today \$32,000 for a single-pa...that's 60% of median income. But at 100% of median income, and I may not have these number exactly correct, but Eugene could give us a chart right now, it's just not before me, that at 100% of median income, which I think this year this is 2009, 100% of median income with a family of four is \$70,000, and that those folks could afford...I'm sorry, I don't want to get this too confusing with all these numbers. The bottom line is this is for families on Kaua'i that make up to \$93,000 for a family of four that we require affordable housing be built. And that's not new. That's not a new policy. In the past the state had a requirement of 60% of the housing be built affordable. 'Ele'ele Nani, Hanapēpē Heights, Healanī (sic) Village are just a few that come to my mind that were...those homes were built as a requirement of affordable housing. You know, we're continuing that. Maui currently has a bill that requires 50%. The bill that we passed has a baseline of 30% but with the incentives to integrate housing and other incentives, it can be as low as 15%. So...the...but when those homes are made available for purchase to Kaua'i citizens, the cost is set by ordinance and so if they have to spend 832 additional dollars to insulate the walls or even a thousand or two thousand dollars, that cost...it won't impact the cost to the end user because that's set by ordinance. The people who will realize those cost savings are the contractors who built the housing in the first place. So affordable housing's not a new thing. We need it because even if you have a family say, you know, a fireman and a teacher, they're still...we're not generating...the market is not generating housing that's affordable to our working middle class here. So we'll only have homes on Kaua'i that are for people who don't live here that have to spend a million dollars or more. So, I know we're not here to debate affordable housing, but we have an affordable housing policy. This is about having those homes built to the recommendations of our Building Code Council and having them be livable, so.

Chair Asing: Okay, with that, councilmembers, each councilmember will have one more time to make anything or say anything that they want to and then we're going to call for the vote. I think we've had a lot of discussion. I must tell you, councilmembers, or let me put it this way, rather than tell you, remind you that most of this discussion that is happening today happened last week in the committee meeting. So, it's nothing new. We are rehashing information that was presented last week. So, you know, I don't want to go on and on and on. So with that, Councilmember Kaneshiro.

Mr. Kaneshiro: Thank you for that, Mr. Chair. Basically, you know, I'm ready to support the bill as is that has been passed on from committee. And you know, I don't like the thoughts of government mandating. If you look at the Department of Business, Economic Development and Tourism's report, it says radiant barrier. So we don't need to necessarily have to have, even the affordable housing projects, be insulated. They can use some sort of a radiant barrier. And what I heard from Doug last week when I questioned him about radiant barrier, what is radiant barrier. He said it can be some sort of white painting; it can be some sort of paintings that, you know, reflects the sun off the walls. So, what we're talking about here is mandating insulation. That's what we're talking about here on any of the...this amendment that they're proposing passes.

And the other thought is this too. Whenever we have government housing, whenever government housings are proposed, it comes before the council usually for zoning requirements. What are the zoning requirements? We tell you you need to provide this X amount of housing. Now if it's in the Kekaha area, we can also tell them that I think you either have to put some radiant barriers or some installations...insulations. We can do that. So, we have that opportunity to do that at those times and issues when these affordable housing projects come before us. But to just mandate it right off, you know, as proposed through this amendment, I'm not able to support this at this time, Mr. Chair.

Chair Asing: Thank you, with that, any further discussion?
Councilmember Bynum.

Mr. Bynum: Last time.

Chair Asing: Your last shot.

Mr. Bynum: Last time.

Ms. Kawahara: Oh, is it the last ones? Okay.

Mr. Bynum: What we're talking about is the radiant barrier, right. The code allows flexibility about how to meet that standard. If we don't have this amendment, we've exempted that and people can build homes that do not meet that standard. Now there are many things our building code mandates. It mandates low volume showerheads because of the public need to conserve water. It mandates hurricane clips because of the public need to not have roofs blow off. This has become the standard of practice all over the country. All of our colleagues in the other counties have passed this after they had their dialogue and I just can't see us exempting anybody. We've already done that, but certainly not the housing that's built affordable as a...for Kaua'i middle class. So, that's my last time.

Chair Asing: Thank you. Go ahead.

Ms. Kawahara: Okay. Thank you for the one last time. I just wanted to put up one slide and say we were just discussing it with Gary Mackler about 50 units coming up that the county will be building. To be able to have the full envelope included in our affordable housing building of 50 units, the whole idea is that our affordable housing be something that embraces energy efficiency home quality, prevents heat gain, and increases the value of resale. So, I think what we're talking about here, this insulation for the walls for affordable housing, is something that we really need to...I would hope that councilmembers would approve because it is something that the government is responsible for and responsible to people to provide it. And housing is not merely shelter and this is from Architecture for Affordable Housing where...by Sam Davis, I believe he's a UC Berkeley professor. He goes into detail about all the tensions between private sector and public affordable housing. But in the end it comes down to housing is not merely shelter or basic protection from the elements. It must also bestow on its inhabitants a sense of dignity, one's home is one's castle. Do you take pride in your dwelling? Does it make you feel safe, secure, and satisfied when you are there? To ignore this aspect of housing which is specifically what we're talking about, how people live in their houses and how long they will be living there and living their lives in such a place, to ignore that aspect of housing or to consider it a prerequisite only for those who can afford market-rate housing, is to invite social and financial disaster—I wouldn't say that, that's kind of strong. But it...it...it does, you have to think about that. Moreover housing is a key ingredient to community building. So, I would like fellow councilmembers to consider that because yes, we all agree that we want housing. How we want housing built here is, I think, the contention that we're having. We all want roofs over everybody's head and be able to provide affordable housing that is comfortable. When it comes down to whether or not private sector is going to allow and put that housing in, that's where the government, I think, has leverage to say, well we believe that this is energy efficient, this is good for energy, this is good for people living there. Therefore, that's why I'm suggesting that affordable housing be required to do the insulation, and for all those reasons, I hope the...my councilmembers can support the amendment. Thank you.

Chair Asing: Thank you, with that, Councilmember Chang.

Mr. Chang: Thank you, Chair. I enjoyed listening to this conversation and I'm glad Councilmember Kaneshiro used Kekaha as an example because I think we used 'Ewa Beach and Wai'anae as examples about those areas being hot also. I see our housing director Eugene Jimenez is here, so I'm going to say what I want to say and perhaps he might want to say something if he wants to say anything. But, you know, I listened to the conversation and I'm...I...I am at the point as the Chair discussed, I think we discussed this in committee last week. But I'm at the point at this time to give one the opportunity what they want to do with their housing and I'm going to give an example. Most of you folks know that I live in the Puali subdivision. The roofs are insulated. I don't get much heat because I live right in the path of the trade winds and the western side of my house is blocked by the duplex. So, I basically shade them, they basically shade me, and that's the way that it was strategically planned. And I am very, very familiar with Pa'anau and as I look at the map of Pa'anau Division here, you can see the area of the trades, you can see a lot of the trees in this area. And I was chatting with Mr. Jimenez earlier and you mentioned you're not sure whether the walls are insulated or not. But one of things that we had chatted about was sometimes somebody sacrificed their garage because they couldn't build one and they wanted to put a solar heater or there were other different options. When I had to buy and move into my home, it was whether you want carpet or whether you want tile,

whether you want linoleum or you want marble, and those were the decisions. But one of the decisions that I made and I was strongly asked to do it was I was heavily recommended if you're going to buy anything, buy a whole house fan. And I'm not sure if people know what a whole house fan is, but a whole house fan...you open up your windows a crack of about 2 to 3 or 4 inches and you turn on the switch and it's supposed to suck up all the hot air. That was the biggest cost of my options for my home and I have honestly turned the whole house fan on maybe 10 times in five years and maybe the only time I use it was just to make the noise and show people I had a whole house fan that's supposed to suck out the heat, but more so I actually used that to spray Lysol. You know, like to go spray and spray the house and make it smell good and then circulate the ventilation. And that's what I use my big investment of a whole house fan. So I'm really at this point right now that many homes are built within the trade wind norm and you know, I cannot tell you when I can even tell you the last time my home ever heated up and I think my biggest failure was I listened to somebody that told me you need a whole house fan. And at that point, you know, as we had mentioned earlier, I think we should give the people the option, what they want to use their money for and you know, if we're looking at people that make money, if they can afford to do what they want to do, they can afford to do what they want to do. But with that being said, I'm not sure if we can ask if Mr. Jimenez wants to say anything, but other than that I think I'm ready to vote.

Chair Asing: Thank you. Councilmember Kawakami.

Mr. Kawakami: Thank you. And you know, like I said it's just two different schools of thoughts.

(Inaudible.)

Mr. Kawakami: I just lost my train of thought.

Mr. Kaneshiro: Sorry about that, Mr. Kawakami.

Mr. Kawakami: But you know we talk about dignity...you know we talk about dignity and how it's important and I agree. You know, it's just...my feeling is giving somebody the opportunity to own a house or even to have housing is the biggest dignity we can bestow upon them. You know, you look at the Waipouli Project is a good example, Waipouli Project that the Showe's have done. They, on their own, blew up the room sizes bigger, on their own made it bigger. They got laminate flooring, they got great appliances, nice countertops, and that's the kind of things that bestow dignity amongst homeowners, especially in affordable, the gap housing group. If we can give them that kind of dignity, I'd feel much more...much more better about it. I mean I've yet to see somebody come up to me and say, brah, check up my house, get wall insulation, and have them be just extraordinarily proud about that fact. I mean, comfort is great. There's many ways we can utilize and attain comfort living levels. I mean there's studies on ceiling fans and how a simple ceiling fan is a great way to cool your environment. And it's a great way to conserve energy too because it doesn't drain that much energy. Ceiling fans, I think, there's some comparisons that it runs roughly about the same amount as a regular light bulb to cool a room. And so, you know, we talk about dignity, I think just being able to give people the opportunity to have homes and housing is the greatest dignity we can bestow upon them. Thank you.

Chair Asing: Thank you, with that, let me close with just a few comments. I guess there's a...there's been a lot of discussion, a lot of so-called facts presented. I do question some of the so-called facts. I'm not sure about the \$832 for the wall insulation. That figure is awfully, awfully low. Where that came from, how it was obtained is very, very questionable to me. I do know something about building houses. I've built a few myself. Now, I can tell you that one of the things that concerns me is more mandate. When the county starts to mandate things, I think in some cases I will agree as an example as brought up by Councilmember Bynum about the hurricane clips. I agree. I mean, there's a history and a good reason for the hurricane clips. And so mandating that is something I can agree with. But mandating is a real problem to me, we need to be very, very careful of what we mandate and tell the public or anyone else this is what you must do. You have no choice. No choice? It's my money you're talking about. It's money that you're talking about. I should have a choice on what I do. I will also tell you that as an example I don't agree with the state legislature when they went into mandating the solar heating system. I don't believe in mandate. It is my choice. I have X number of dollars to put the house up. I have choices. Now, I will also tell you that seeing Mr. Jimenez here, you know, we go back, Gene, Brydeswood Terrace has been in operation probably 20 years? Close to?

Mr. Jimenez: About 30.

Chair Asing: 30? Okay. Wow, that long? Time flies. Anyway, that project was mandated to be solar. So all of that...those units there were solar. At that time the council made a decision that solar was going to be the issue and so we looked at that because of energy and cost and so you will see that. But we had choices though. We could have said no. We could have said yes. And what we're trying to decide now is choices. So, I will agree with the bill as it is. It gives you a choice and that's why I will support the bill as it is written today because you have a choice and that's really where I'm coming from. So, with that, roll call please.

Ms. Kawahara: What is on the floor? Is it the amendment or the bill?

(Inaudible.)

Mr. Kaneshiro: Hold on one second. Just for procedural-wise, there is no floor amendment on the floor. No one made the motion to have it on the floor, neither was it seconded. So we can vote on the bill. There was one amendment that Mr. Bynum did. The one amendment was a word correction. So basically that's where we're at right now. Amend the bill as...

Ms. Kawahara: Move to amend.

Mr. Bynum: Second.

Ms. Kawahara moved to amend Bill No. 2332, Draft 1, as amended, as shown in the Floor Amendment attached hereto (Attachment No. 2), seconded by Mr. Bynum.

Mr. Kaneshiro: We're not even there.

Chair Asing: Okay. Let me just do it...

(Inaudible.)

Chair Asing: Let me do it this way. There has been another amendment that was just made, which is the amendment that was under discussion, and there was a second. Let's vote on that amendment. All those in favor, say aye.

Mr. Bynum & Ms. Kawahara: Aye.

Chair Asing: Opposed say no.

Chair Asing, Mr. Kawakami, Mr. Chang, Mr. Kaneshiro: No.

Chair Asing: The noes have it.

Ms. Kawahara: Can we get a vote?

Chair Asing: The noes have it. There is no amendment now.
That's done.

Mr. Bynum: Wa...wait...wait.

Chair Asing: We're back to the main motion as amended. We're back to the main motion as amended. Go ahead, councilmember.

Mr. Bynum: Can the clerk tell me who voted how?

Ms. Kawahara: Yes, please or do a roll call.

Chair Asing: We had two votes...

Ms. Kawahara: I wanted to know who the...

Mr. Bynum: I...

Ms. Kawahara: I couldn't hear.

Chair Asing: You didn't hear it, okay. Voice call. Voice vote.

Mr. Nakamura: This is on the amendment...

Ms. Kawahara: For the amendment.

Mr. Nakamura: Sorry, Council Chair. This is on the amendment introduced by...

Chair Asing: Yes.

Mr. Nakamura: ...Councilmember Kawahara?

Chair Asing: Yes.

Mr. Nakamura: Councilmember Bynum.

Mr. Bynum: Aye.

Mr. Nakamura: Councilmembers Chang.

Mr. Chang: No.

Mr. Nakamura: Kaneshiro.

Mr. Kaneshiro: No.

Mr. Nakamura: Kawahara.

Ms. Kawahara: Aye.

Mr. Nakamura: Kawakami.

Mr. Kawakami: No.

Mr. Nakamura: Chair Asing.

Chair Asing: No.

Mr. Nakamura: Four to two, Mr. Chair.

The Floor Amendment (Attachment No. 2) introduced by Ms. Kawahara failed passage by a vote of 2-4-1 (Mr. Furfaro recused).

Chair Asing: Thank you. We're back to the main motion as amended. Roll call please.

The motion to adopt Bill No. 2332, Draft 1, as amended to Bill No. 2332, Draft 2 was then put, and carried by the following vote:

FOR ADOPTION:	Bynum, Chang, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL - 6,
AGAINST ADOPTION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:		TOTAL - 0,
RECUSED & NOT VOTING:	Furfaro	TOTAL - 1.

Chair Asing: Next item please.

(Vice Chair Furfaro was noted present in the meeting.)

Mr. Nakamura: Next bill for second reading is proposed draft bill...I mean I'm sorry, Bill No. 2336, Draft 2, a bill for an ordinance to amend Chapter 16, Article 20, Kaua'i County Code 1987, as amended, relating to the traffic code. Public Safety/Energy/Intergovernmental Relations Committee recommended approval.

Bill No. 2336, Draft 2 - A BILL FOR AN ORDINANCE TO AMEND CHAPTER 16, ARTICLE 20, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE TRAFFIC CODE: Mr. Bynum moved for adoption of Bill No. 2336, Draft 2 on second and final reading, and that it be transmitted to the Mayor for his approval.

Chair Asing: Hang on. Well, you want to (inaudible)? Go ahead.

Mr. Kawakami: With all due respect, Councilmember Bynum...

Mr. Bynum: Yeah.

Mr. Kawakami: I was going to ask for a deferral...

Mr. Bynum: I'm sorry.

Mr. Kawakami: ... just because there are some details we're trying to work out with some county agencies that are on the two-way radio system including the transportation, the bus system, some employees of public works, so if I could ask for a deferral while we get that information.

Mr. Bynum: I apologize, I wasn't aware of that.

Chair Asing: Hang on, yeah, I don't think you, you know, understood that, but you want to withdraw your motion?

Mr. Bynum: I'll withdraw my motion.

Mr. Kawakami: Thank you.

Mr. Bynum withdrew his motion for adoption of Bill No. 2336, Draft 2.

Chair Asing: Okay, with that information, we're back to...

Mr. Kawakami: Move to defer.

Chair Asing: Move to defer.

Ms. Kawahara: Second.

Chair Asing: Can I have a second.

Ms. Kawahara: Second.

Chair Asing: There's a second.

Mr. Kawakami moved to defer Bill No. 2336, Draft 2, seconded by Ms. Kawahara.

Chair Asing: Hang on, we have someone here who wants to speak before we vote on this. Let me have the public up, please.

There being no objection, the rules were suspended.

STANLEY DOTARIO: I was going to say good morning, but I have to say good afternoon (inaudible). Councilman Kawakami, I...for seven years I worked for this company and...

(Inaudible.)

Mr. Dotario: Mr. Kaneshiro knows who I work for and his office was his car. And when we used to drive through the Wailua corridor, I used to be on needles and pins and by the time we would reach our jobsite, my neck would be sore because he was with his cell phone, his knees would be controlling the steer and he would be writing the names and the address of the jobsite. So as far as this bill here and I'm glad it's being deferred because I think there's little bit more time

to be...you know think about it, but it's very dear to me. Because I've been driving for 50 years and in 50 years I had only one accident. That was 40 years ago and I was going to one baseball practice right in front of Fish Express, and this young man of 16 years old, who never had no cell phone in that days, and had rear end me. Now, we all have heard, whether it was our parents, our teachers, or if you play sports, to pay attention. So I really believe in paying attention, especially in my case. You gotta pay attention when you drive. So I like this bill. What I'm concerned about is, maybe you can explain to me, Councilman Kawakami, the deferral...the people that going get exempt, can you...can you ex...refresh me on the people that going be exempt?

Mr. Kawakami: The exemption is for CDL drivers that use two-way radios.

Mr. Dotario: Okay, CDL drivers. Now I consider myself a professional because I drive for 50 years. I was one haul cane truck driver for 10 years for Lihu'e Plantation. There's nothing worse than driving 2 o'clock in the morning in the rain coming down some muddy road in one cane field. I want you to tell me why is it the CDL driver who drives one haul...on one highway better than me to concentrate and drive. I want to know the difference there. What makes him exempt and makes me a second-class driver?

Mr. Kawakami: From my understanding, two-way radios are not as...how do you say...there's no phone numbers, yeah, to dial when you're driving. From what we understand, CDL drivers also get trained a lot more often than the regular driver, and it's...it's from meeting with the Hawai'i Transportation Authority and some of the commercial truck drivers down here. It is...it is a key component to their business.

Mr. Dotario: Okay, now as a...as a haul cane truck driver, we go through a lot of training too, you know what I mean. And yes, maybe dialing the numbers, but it still takes concentration.

Mr. Kawakami: Yeah.

Mr. Dotario: The thing is to pay attention. Now, if I cannot pay attention while I'm talking on a cell, how can a CDL driver, who driving where there's traffic all over the place, can do it and I cannot. And that's where I'm confused, yeah.

Mr. Kawakami: Would like us to remove the exemption for companies like Kaua'i Freight...

Mr. Dotario: (Inaudible.)

Mr. Kawakami: ...and Polynesian Adventure Tourism. That can still be done if you...

Mr. Dotario: You know, I can see Police Department, emergency vehicles, right? Because most emergency vehicles, you...you get the passenger that can handle the phone, right? But one commercial which are...your company's involved, right? And you know how long it takes for one commercial vehicle to stop, right? And I...I confused, they alike, you know what I mean. If, which I approve of this bill, I think everybody who drive one scooter to one...to one 16-wheeler should abide by this law. Thank you very much.

Mr. Kawakami: Thank you, that's some good points.

Ms. Kawahara: Thank you.

Mr. Nakamura: Council Chair.

Mr. Kaneshiro: For the record, your name? Please state your name.

Mr. Dotario: Oh, Stanley Dotario.

Mr. Kaneshiro: Thank you.

Mr. Dotario: Thank you.

Chair Asing: The meeting is called back to order now. With that, we have a motion to defer. All those in favor say, aye.

The motion to defer Bill 2336, Draft 2, was then put, and unanimously carried.

Chair Asing: That is the...

Mr. Nakamura: Next...last bill for second and final reading is proposed...is Bill No. 2340, a bill for an ordinance relating to zoning designations in Ordinance No. PM-229-91 Kilauea, Kaua'i (County of Kaua'i, Applicant). Planning Committee recommended approval of this bill.

Bill No. 2340 – A BILL FOR AN ORDINANCE RELATING TO ZONING DESIGNATIONS IN ORDINANCE NO. PM-229-91; KILAUEA, KAUA'I (County of Kaua'i, Applicant): Mr. Furfaro moved for adoption of Bill No. 2340 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Mr. Chang, and carried by the following vote:

FOR ADOPTION:	Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0.

Chair Asing: Thank you. This being the end of the agenda we have, except for the Executive Session that we have, so we're going to move into executive session. Thank you, everybody. So...

Mr. Furfaro: We need to call up the county attorney.

Chair Asing: Yes, County Attorney?

There being no objection, the rules were suspended.

Mr. Furfaro: Mr. Chair...

Chair Asing: Yes.

Mr. Furfaro: We still have the public hearing at 1:30 p.m.
(inaudible)?

Chair Asing: At 1:30 p.m., yes.

Mr. Furfaro: Thank you.

MICHAEL DAHILIG, Deputy County Attorney: Good afternoon, Mr. Chair, members of the council, Mike Dahilig, Deputy County Attorney. Pursuant to Hawai'i Revised Statutes Section 92-4, 92-5(a)(4) and (8), and Kaua'i County Charter section 3.07(E), the Office of the County Attorney requests an executive session with the Council to provide a briefing regarding legal issues relating to the proposed adoption of Bill 2298 and certain provisions of ordinances 864 and 876. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Asing: Thank you, with that, I'd like to call the meeting back to order and have a motion to move into executive session.

The meeting was called back to order, and proceeded as follows:

Mr. Furfaro moved to convene in executive session, seconded by Mr. Bynum, and unanimously carried.

Chair Asing: We're going to move into executive session. Thank you.

There being no objection, the Chair recessed the meeting at 12:11 p.m. The meeting reconvened at 4:08 p.m., and proceeded as follows:

ADJOURNMENT.

There being no further business, the meeting was adjourned at 4:08 p.m.

Respectfully submitted,



PETER A. NAKAMURA
County Clerk

/wa

January 21, 2010
FLOOR AMENDMENT

BILL NO. 2332, Draft 1, Relating to the Energy Code

Introduced by: Tim Bynum

Amend Section 405.3 to read as follows:

“(25) Amending Section 405.3. Section 405.3 is amended to add the following Exception:

For unconditioned habitable spaces compliance may be based on resistance to heat gain. Compliance based on heat gain requires that the proposed design be [show] shown to have an annual heat gain that is less than or equal to the annual heat gain of the *standard reference design*.”

(New material to be added is underscored. Material to be deleted is bracketed.)

January 21, 2010
FLOOR AMENDMENT

BILL NO. 2332, Draft 1, Relating to the Energy Code

Introduced by: Lani T. Kawahara

Amend Section 101.5.2 to read as follows:

“101.5.2 Low energy buildings. The following buildings, or portions thereof, separated from the remainder of the building by building thermal envelope assemblies complying with this code shall be exempt from the building thermal envelope provisions of this code:

1. Conditioned spaces with a peak design rate of energy usage less than 3.4 Btu/h ft² (10.7 W/m²) or 1.0 watt/ft² (10.7 W/m²) of floor area for space conditioning purposes.

2. Unconditioned spaces that are non-habitable spaces.

3. Unconditioned habitable spaces are exempt from wall insulation requirements of the building thermal envelope provisions, except for unconditioned habitable spaces that are developed to be affordable to gap-group households as determined by the Housing Director of the County Housing Agency.”

(New material to be added is underscored. Material to be deleted is bracketed.)